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IMMIGRATION REFORM AND CONTROL ACT

HEARINGS

BEFORE THE

SUBCOMMITTEE ON
IMMIGRATION AND REFUGEE POLICY

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

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A BILL TO REVISE AND REFORM THE IMMIGRATION AND NATIONALITY ACT, AND FOR OTHER PURPOSES

FEBRUARY 24, 25, 28, AND MARCH 7, 1983

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IMMIGRATION REFORM AND CONTROL ACT

THURSDAY, FEBRUARY 24, 1983

U.S. SENATE,
SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:05 a.m, in room 418, Russell Senate Office Building, Hon. Alan K. Simpson presiding.

Senator **SIMPSON**. The hearing will come to order.

Good morning. I see some familiar faces here on the same old issue which will never go away, so we will try again to deal with it.

I just want to express my appreciation to two very able members who served on the subcommittee last year, Senator Thurmond and Senator DeConcini and who are no longer on the subcommittee. I deeply appreciate their participation in every way.

Now we have two new members of the five-member subcommittee, Senators Mathias and Heflin. I am very much looking forward to working with them, and benefiting from their thoughtful and very wise counsel. They are two who have proven themselves to be rather skilled in the mystical pursuits of legislative arts. It is a pleasure to welcome them to the subcommittee.

Again, I look forward to working with my ranking minority member, Senator Kennedy, who has always provided thoughtful counsel and assistance to me and to his fine staff, Jerry Tinker, and to my own crew, Dick Day, Donna Alvarado, Arnold Leibowitz, and Betsey Greenwood, as we go forward now with our new duties in a new session.

[The prepared statement of Senator Kennedy follows:]

PREPARED STATEMENT OF SENATOR EDWARD M. KENNEDY

I am pleased to be able to join our distinguished Chairman, Senator Simpson, in opening these hearings to consider major legislative proposals dealing with one of the oldest and most important issues in our Nation's history. For immigration reaches to the heart of what America is today and what it will be tomorrow.

Yet as important as immigration has been to America's life and history, our current law and policies are hopelessly inadequate to handle the migration pressures of our time. The existing statute is two generations out of date.

For many years, I have shared the view of Senator Simpson and many others that immigration reform is imperative. It was for this reason that I supported the work of the Subcommittee in the last Congress in dealing with the legislation introduced by Senator Simpson which was based, in part, upon some of the recommendations of the Select Commission on Immigration and Refugee Policy. Although I could not in the end, support all of the bill's provisions, I recognize that it was a serious effort to deal fairly with the many conflicting views on immigration policy, and it involved some very difficult compromises.

That task is before us again. Hopefully, these hearings will build upon the experiences and the debate in the last Congress, and on the work of the Select Commission, so that we can finally resolve some of the contentious issues that remain before we achieve genuine immigration reform—and not merely immigration restriction.

I hope we will consider new ideas on how to deal more adequately with the fears of many of our citizens that new discrimination may result from enactment of employer sanctions.

I hope we will approach changes in the existing preference system more fairly, and preserve some flexibility in our annual immigration quotas.

I hope we will see the wisdom of enacting a generous and workable legalization program to finally put an end to the subclass of undocumented aliens living in fear in our society, even as they are being exploited by many employers.

Finally, I hope we will avoid creating a massive new temporary worker program at a time when over ten percent of Americans are unemployed.

These and other issues will come before us and I look forward to working with my colleagues on the Subcommittee in acting on immigration legislation that will reflect the reforms we all know are so long overdue.

Senator SIMPSON. So, I welcome the witnesses. We are going to have 3 days of hearings very swiftly on Thursday, Friday, and Monday on the Immigration Reform Act, S. 529, which is not quite as distinctive as the other one, but those are the breaks of the lottery over there. This is the same bill that passed the Senate 6 months ago, and most of the witnesses, we shall have here in the next 3 days have previously testified concerning the legislation.

During the last 2 years, the subcommittee has conducted 16 public hearings and 5 consultations on subjects related to immigration policy and reform. We have had independent hearings here in the Senate, and we have had a series of joint hearings with my good friend and colleague, Ron Mazzoli on the House side. Together, the Senate and House committees have conducted 33 hearings and have heard from over 300 witnesses in the past 22 months.

We have had access to all of the previous work done on immigration reform in the past, including the efforts of the administrations of Presidents Ford and Carter, the Select Commission on Immigration and Refugee Policy on which I served and, interestingly enough, on which Senator Kennedy and Senator Mathias also served and where we had the good fortune to participate under the fine and sensitive leadership of Father Ted Hesburgh.

We have had the recommendations of the Reagan Task Force on Immigration Reform, headed by a very capable person in the person of William French Smith who will testify on Monday and, finally, the legislative proposals submitted by the President.

So, we have had an exhaustive effort which has already been expended on the subject because of the concerted efforts we have made to hopefully draft a very fair and humane bill to serve the national interests.

Because of the forward support this legislation has received from various sources, I again put this same bill in, which lost in the Senate by a vote of 80 to 19. The legislation is a vehicle for use in the subcommittee, and it is the subject of the hearing today. The sole and nonmystical effort is to bring immigration to the United States back under the control of the American people who exercise the first duty of any sovereign nation, and that is control of its borders—nothing more than that.

Hopefully, we address again these most serious deficiencies in the enforcement procedure. This bill is the result of bipartisan compromise. While it is most assuredly not perfect and it will not approach perfection in implementation, I can assure you all of that, it is a very small first step forward and contains details which obviously are not going to be satisfactory to some but, again, I say the bill represents a balanced and reasonable approach toward making immigration to the United States once again serve the national interests not only in theory as spread on the statute books but in actual operation.

So, here we go again. As we say in Cheyenne during frontier days, "Here we come shooting out of No. 4 one more time." So, we will process the legislation again. We will single out every amendment offered by the thoughtful people of this body who generally wish to improve the bill.

Please be assured we will carefully review every amendment presented to us, hopefully keeping its balance and fairness. These hearings are not just scheduled to shoot through this legislation. That is not what I am up to at all.

I would like to thank all of you for being here.

I see the Senator from Kentucky has now joined us. I cannot say enough appropriate things about this man's following of the issues of immigration and refugee policy in the Senate while others were paying no attention whatsoever. He doggedly pursues it and pursues it with his steadiness and skill, and he has been of very great assistance to me in tailoring the legislation and trying to address all of the various facets and still yet keep the differentiation and deal separately with refugee issues separately from immigration issues which get very confused in the public mind.

So, Senator Huddleston, it is nice to have you with us.

STATEMENT OF HON. WALTER D. HUDDLESTON, A U.S. SENATOR FROM THE STATE OF KENTUCKY

Senator **Huddleston**. Thank you very much, Mr. Chairman.

I share with you some feeling of deja vu, feeling that I have been here before.

I thank you, Mr. Chairman, for inviting me to testify as your hearings open in the 98th Congress on immigration control. I assure you that I will keep my comments short. As you have indicated, I have been debating and talking about this issue for the past 7 years. Some of my views are on record some place for whoever might want to peruse them.

I know that you must be disappointed about the outcome of your legislative initiative during the last Congress. However, the failure of the bill was not your failure, nor that of my friend and colleague on the House side, Congressman Mazzoli. I do not think anyone could ask that any more be done than you two did in trying to develop this complex and difficult legislation and to see it through passage. It died because others who were in key positions were unable to muster the courage that you two have demonstrated in this extremely emotional and complex issue. In essence, the bill became mired in a morass of parochial, political, and financial self-interests that ultimately won out over the national interests.

However, I believe that the administration must shoulder much of the blame for not getting the bill passed.

Mr. Chairman, if we look through all the political smoke that has been generated, there is one compelling and overwhelming reason why we should pass this bill, and that is jobs.

Even though we have almost 14 million American workers out of work today in our worst recession since the Great Depression, the Federal Government has accepted a de facto policy which forces these millions of unemployed to compete for work in this country with millions of foreign unemployed workers. The only conclusion that can be drawn from this is that this Government is concerned more about the welfare of foreign workers than it is for its own unemployed.

Former Secretary of Labor Ray Marshall stated several years ago that we could reduce unemployment in this country to below 4 percent by simply regaining control of immigration. However, 2 years later the President tells us in his 1983 Economic Report that even after recovery from the recession, "The unemployment rate will reach a plateau between 6 and 7 percent."

I would suggest that the President reconsider the benefits of effective immigration control before he tells us that we have to learn to live with a permanent unemployment level of up to 7 million people. Immigration control can reduce unemployment if we are willing to use it.

If there is any doubt of this, the current Under Secretary of Labor has also provided us with evidence of the impact of illegal immigration on employment. Secretary Malcolm Lovell recently reported that 40 million Americans compete directly with illegal aliens for jobs.

This is understandable when you realize that the average illegal immigrant today is working in a city in a job which pays well. For example, the average wage of illegal aliens apprehended in Denver in the last 2 years was $6 an hour.

At a time when unemployed Americans are standing in lengthening soup kitchen lines or in lines to receive a small block of free Government cheese, I do not believe that we can in good conscience continue a policy permitting almost completely open borders.

I only wish that our own Government was as concerned about its unemployed as the Mexican Government is about its unemployed. As you know, the Mexican Legislature has strongly attacked your bill because it would help stem the tide of unemployed workers streaming up from Mexico.

What this really means is that if we do not act, many of the jobs that are available in this country will go to unemployed Mexican workers instead of to the almost 14 million unemployed Americans.

As a Member of the U.S. Senate, I believe that we should do two things in response. First, we should make it clear to the Mexican Government that it does not set U.S. immigration policy. Second, we should pass S. 259 immediately in order to put as many of our own unemployed back to work as quickly as possible.

I might point out that in all of the jobs bills we have talked about, including the one introduced by Senator Hatfield, the cost of which varies from $2 billion to $7 billion to $8 billion a year, we have not talked about one yet that claims to create enough jobs to accommodate the new people who will be coming into this country both legally and illegally during the next year.

The Wall Street Journal has called this immigration bill the biggest jobs program around, and I agree. In addition, it is the kind of jobs program which has more pluses than minuses. It will cost the Federal Government little additional money to put people to work.

In fact, it may generate more revenue for the Government because of increased tax revenue and lower welfare payments, and because the billions of dollars illegal aliens send out of the country every year would remain here.

It is not a make-work jobs program because all of the jobs opened up will be in the private sector where they will contribute to overall productivity. And there is very little time lag involved. Once the law begins to be enforced, jobs will immediately open up.

What better jobs program could this country want than one which requires little additional Federal expenditures, opens up jobs in the productive private sector, and begins taking effect immediately.

Mr. Chairman, I have been one of your strongest supporters in trying to secure passage of this legislation. Even though the bill bears a strong resemblance to S. 776, which I introduced in 1981, it does relinquish more than I would have in some areas. Nonetheless, I think that the legislation you are proposing is urgently needed, and there must be some compromise in order to achieve passage. I do hasten to add, however, that even though I will be supporting quick action on the bill, I may offer perfecting amendments at the appropriate time.

One of the areas I am particularly concerned about is that of a ceiling on legal immigration. Even though your bill proposes a partial ceiling, I believe that a total one would be much more in the Nation's best interest.

During debate on S. 2222, 50 Senators voted for either the Huddleston or Bumpers amendments, both of which would have imposed a more comprehensive ceiling. Even though neither amendment passed, this strong showing of support from 50 Senators for some kind of ceiling in the face of administration opposition, indicates that a compromise ceiling amendment is desired.

Mr. Chairman, I commend you for the excellent work you have done in the very important area of immigration control. You have shown that you are as compassionate as you are determined and that you have the immense respect of your colleagues on both sides of the aisle.

I support a generous but controlled level of immigration admissions and I believe that you are providing us with a way to achieve this. However, if we again pass up the opportunity to enact real immigration reform, we may lose whatever momentum remains for rational immigration reform for years to come.

When we return to the issue, I fear that the issue will be dominated by demagogs instead of the rational voices you hear today.

I do not want to travel that path. I would much rather that we simply got on with our present task of passing substantive, realistic immigration reform this year.

I assure you that you will have my full cooperation in accomplishing that objective.

Again, I commend you for moving early in this session and giving full consideration to this important legislation.

Thank you very much.

Senator SIMPSON. Thank you.

I must say that although I ordinarily concur with a great many things you share with us—and I am not an apologist for the administration—but in the lameduck session, because of the work of the Attorney General and the House became so intense in pushing the bill, that that in itself unfortunately, ironically gained a partisan tinge and with some of the leadership over there and was one of the reasons it did not go through. They asked, "Is Smith coming here again?" He spent a great deal of personal time with the leadership. The administration did really push to a point where, as I say, it may have been misread, and unfortunately so, as something the administration wanted and no one else did. But, certainly, some of the things you say in your statement lead to the arguments we will hear that this is not the time for immigration reform.

You have succinctly given your views as to why you think it is time. I guess I am convinced there will never be a good time for immigration reform, ever, and, therefore, that is how we have slogged along in it for 30-plus years without really getting it handled.

I might ask you this because certainly this will come up.

There are those who claim that employer sanctions will increase or heighten employment discrimination against minorities. What is your authority on that?

Senator HUDDLESTON. I do not see any reason why that should be the case. We have laws relating to discrimination. It just does not make sense to me that we are going to have, all of a sudden, a great deal of discrimination. We have to have employee sanctions, in my judgment, to have any kind of control over illegal immigration. It is an anachronism that exists at the present time. It is illegal to come into the country without certain documentation or certification but not illegal for those who give then jobs. We have to eliminate the magnet that is the draw.

I believe it can be done. Whether it is done through a secure social security card, or whatever. There have been different methods that have been suggested that do not impose any great burden on individuals.

I am frequently asked to show identification. I had to show identification when I got my first job and second job, and now in daily life it is not uncommon. With proper restrictions and restraints, I do not see why such a card cannot be used for any other purpose except to identify an individual's right to be employed. I do not see that it is going to cause that big a problem. I think it is a red herring that has been thrown out by those who do not want any restrictions in the bill.

Senator SIMPSON. You are the ranking Democrat on the Senate Agriculture Committee. One of the things we thought we had resolved in a very tenuous passage was the H. 2 or temporary worker provisions directed principally toward agriculture. In your work and in your fine work with the Agriculture Committee, do you feel that the H. 2 provisions that are contained in the legislation will be responsive to American agriculture while, of course, meeting the test of insuring protection of U.S. citizens or authorized persons as farm workers?

Senator HUDDLESTON. Mr. Chairman, I think so. There are those who are more directly involved with that kind of activity who may want some refining, but I think the key thing is that we do provide a way for securing foreign workers when it is demonstrated that they are needed. But, when that is done, we take precautions that this is not a substandard kind of an opportunity for those workers and our own domestic workers have first opportunity for those jobs. If domestic workers are not available, then there is no question that producers ought to be able to secure workers wherever they can find them.

Senator SIMPSON. You spoke of the cap in your statement. Could you share with us your opinion as to what might be the result of having no cap at all?

You touched on that, but I would appreciate your views because we get into the issue that came up in the debate, and it is a very real one if it is heard properly, if we had a cap, and I think there is a mood to do so with numbers alone. Fifty of our colleagues decided in some way they want that. Then it is difficult to seem to be able to get that across when you have a cap that some group is going to be squeezed by that cap.

We have this historic allegiance toward immediate family and family reunification, and especially spouses and minor children or children alone, and then brothers and sisters in the fifth preference particularly are limited not because that is what we ought to do but simply because if this Congress should place a cap, you must go to the priorities—to the spouses and minor children.

I would be interested in your views on that.

Senator HUDDLESTON. I thought my cap of 425,000 was pretty generous and based on historical record. It also had considerable flexibilities in it so we could deal with emergency situations by taking extra numbers one year and applying them to another year.

I recognize that you would have competing interests in that cap. As a matter of fact, that is what makes the cap work because, if you don't put on a cap, you have unlimited immigration again if you run into a situation where large numbers should come into the country as refugees or in some other special category.

So, you have to have a competition between groups if you are going to have, in my judgment, any real control.

Senator SIMPSON. Just in your own personal view and your own personal feelings, what do you foresee will occur not only in the Congress but in the country if Congress fails to do absolutely anything in this session of Congress?

Senator HUDDLESTON. I think if we do nothing in this session of Congress, we have lost any real opportunity to have immigration control in the foreseeable future in the United States. There is no question power structures are already being built up. You will see in 1984 both candidates for the Presidency being pushed very hard to make commitments prior to the election relating to any kind of restriction on the Mexican border, and they will be in a position that will make it very difficult for them to push very hard for any meaningful reform. I think that is happening very rapidly in our country. If we don't now put on some reasonable limits and controls, it is going to be virtually impossible after this session of Congress.

Senator SIMPSON. What do you foresee if we do nothing with regard to enforcement capability?

Senator HUDDLESTON. I would hope we would still be interested in treating the INS as they should be treated, by giving them the tools and the resources to enforce the law.

They are the most maligned department, I guess, that we have in government, with the possible exception of EPA right now. In recent days, they have received a lot of unjustified comments. I find it incredible that we have letters going to the President requesting the INS to enforce the law. They are the only agency that is trying to enforce the law. The State Department has been trying to go around the law for several years. Because INS wants to enforce it, they are getting the criticism at the present time. Something needs to be said and done about it.

I think the demand will be much greater for more strictly enforcing the law if we don't do something to put on some kind of reasonable limits.

Senator SIMPSON. I thank you, as always, for your thoughtful sharing of your concepts of reform, and I deeply appreciate it. Thank you very much.

Senator Hawkins, let me very much welcome you here. You have followed this issue so very carefully in my time here. I was going to say that you have followed it persistently and doggedly at least as you deal with me because you don't let me rest on those issues that you have great concern about, and I admire that in people. Occasionally, I do it myself.

STATEMENT OF HON. PAULA HAWKINS, A U.S. SENATOR FROM THE STATE OF FLORIDA

Senator HAWKINS. I learned from you.

Senator SIMPSON. Of any State in the Union, your State is the most heavily affected. People sometimes cannot comprehend the intensity of the issue in Florida.

So, I very much appreciated your patience and your participation, and I look forward again to that in the coming session and will certainly be looking forward to having your views.

Senator HAWKINS. Thank you, Mr. Chairman. I appreciate those comments. It is a terrible problem that we have. I appreciate your patience and our impatience in Florida, and I thank you for reintroducing the immigration bill. I am very sorry it did not pass in the last Congress.

Your outstanding leadership and the skill with which you managed this bill set a fine example for all of us in the Senate and, hopefully, we can move swiftly in the Senate this year and also in the House.

There are a number of issues that I urge this subcommittee to consider as it reviews and later marks up this legislation. It is of paramount importance, though, that we act swiftly on this legislation. If we hesitate, we could find this issue entangled in the rhetoric of the 1984 Presidential campaign. That, I fear, could undermine our efforts to enact a comprehensive, responsible revision of our immigration laws. I am pleased that the subcommittee is beginning its hearings early in the year, and I hope that we will be able to see immigration legislation on the floor by early spring.

As you know, Mr. Chairman, you and I did not see eye to eye on every provision in the immigration bill that passed the Senate last year. However, I am convinced that the current immigration situation in this country is totally unacceptable, and that the legislation passed by the Senate last year was a step in the right direction. But there is still room for improvement. I would like to share with the subcommittee some areas that must be addressed as it reviews this legislation.

The two most glaring omissions from this legislation—as far as Florida is concerned—have to do with immigration emergency power and local reimbursement—something you have heard about before. It is critical that special powers be granted to the President in times of immigration emergencies. I have already testified before this subcommittee on the devastating impact that the Mariel boatlift had on my State, Florida. Over a period of a few short months, 120,000 undocumented Cubans landed on Florida's shores. Tent cities were hastily constructed under the shadow of highway overpasses. Thousands of the would-be immigrants were perfunctorily screened in a quick effort to distinguish legitimate refugees from the criminals, the mentally ill, and other outcasts that Castro chose to dump on the United States.

South Florida is still recovering from the impact of this crisis. As you know, in most cases, crime increases in proportion to increases in the population. The increases in the Dade County crime rate, however, have far outstripped the population increase. In the year following the Mariel boat-lift, Dade County's population increased by roughly 10 percent, but the increase in serious crimes rose by over double that: 23 percent. Prior to the boatlift, the crime rate in Dade County had actually decreased. I believe that this underscores the real purpose of emergency powers. It is to shield the people from the impact of a sudden and massive influx of undocumented aliens.

I know that the issue of emergency immigration powers is a sensitive subject with some, and I am not recommending that we ignore the criticisms and steam full speed ahead, even though it is tempting. This subcommittee held hearings on this subject last year, and I urge you to hold hearings again this year. But I believe that it is essential for constructive legislation to emerge from these hearings. Our communities must have more effective protection against another Mariel-type disaster. If we do not act promptly, I believe that the 1984 elections will delay rational discussion and reasonable solutions to this problem for at least another 2 years.

Mr. Chairman, my support for immigration emergency powers does not preclude our country's policy of accepting persecuted people from all over the world. I fully believe that the United States should continue to welcome those who fear death or imprisonment because of their political or religious views. As you all know, Florida has been a haven, a retreat, for Cubans and other Latin Americans who have fled tyranny and persecution, and I am proud of that. Florida has become home to these brave refugees. You have met several of them at several events, and they in turn have made significant contributions to the prosperity and culture of our State. I am committed to strong enforcement of effective immigration laws, but we must continue to welcome those who are eligible to enter our country as political asylees.

There is another issue that is crucial to protecting our communities from immigration emergencies. Mr. Chairman, you and I have discussed this issue before, and I remain committed to it: It is the issue of reimbursing State and local governments in the event of an immigration emergency resulting from the premeditated actions of a foreign government. As you may recall, I introduced a measure last Congress that would have required the Federal Government to bear 100 percent of the cost of any future Mariels. This, I believe, is the very least we can do. This would go a long way in easing the fears of government and business leaders as well as the average person in south Florida—fears that they would have to bear the huge financial burden of another immigration emergency. The cost of the Mariel boatlift has been conservatively estimated in excess of $1 billion. Of that, Florida State and local governments picked up a significant chunk: $150 million.

Foreign policy is the sole responsibility of the Federal Government. State and local governments do not have access to the necessary diplomatic tools or military hardware to conduct affairs of state—and I don't believe they should. This means that when the Federal Government fails to prevent another nation from taking steps to encourage the violation of our immigration laws, the Federal Government must bear the responsibility for that failure. That includes financial responsibility. This principle was reflected in the measure I introduced last year, and I hope that the subcommittee will include this kind of a provision in the bill it sends to the floor. It is only fair to our State and local governments.

I am pleased that the proposed legislation again includes the much-needed expedited asylum hearings process as well as employer sanctions. Those who think that Florida is no longer the target of illegal immigrants couldn't be more wrong. The Immigration and Naturalization Service has estimated that as many as 2,000 persons are being smuggled into south Florida each month. As we sit here, I have seen so many phony papers and documents I cannot tell you how disgusted I am with what is happening in these foreign countries. Haitians, Dominicans, Colombians, and even Bangladeshi continue to land in large numbers on Florida's shores. Mexicans are also being smuggled in through north Florida to provide agricultural labor. Clearly, there is a need to determine swiftly which aliens are eligble to remain in the United States and which are not. Then, those who are not should be returned to their point of origin as soon as possible.

I realize that this is only a partial solution to the problem. The other half is, of course, to deal with the smugglers. Over the past 4 years 259 people have been arrested in Florida for smuggling, but only 24 defendants have been sentenced for a year or more. In fact, 44 percent of those who go to trial on smuggling charges in south Florida are not convicted at all. But, even when convicted in Florida, the average sentence for people smuggling is only 10 months, as compared with the national average of 2 years. I hope that the subcommittee will look into this problem, and consider the possibility of mandatory sentences for people convicted of people smuggling. The haphazard pattern of sentencing for this crime dilutes the effectiveness of the law. Unless we provide a real disincentive for people smuggling people, and provide the INS with the resources to enforce the law, trafficking in human beings will continue unabated.

Employer sanctions are also a criticial part of this legislation, especially if the amnesty provisions remain in the bill. I have serious reservations about the amnesty program. I believe that it undermines our own laws. It sends the wrong signals to aliens, and it could be very expensive to our own people. But if there is an amnesty program, then there must also be employer sanctions. Employer sanctions are the only effective means to eliminate the incentive that brings so many illegal aliens to our shores—the search for jobs. Unless this incentive is removed, illegal aliens and professional smugglers will continue to take advantage of our extensive borders and shorelines—not to mention our generosity—to violate our immigration laws.

In closing, I would again urge you to move forward with this legislation with all possible speed. I believe that this legislation is needed now, and delay could threaten it. I hope you will consider the recommendations I have made today, and I look foward to working with you to improve and perfect this important piece of legislation.

Thank you.

Senator SIMPSON. Thank you very much, Senator Hawkins.

Indeed, you bring a special viewpoint to the subcommittee because of the heavy brunt that your State has from this Nation's inability to quickly process asylum applications, and you have mentioned that, first with the Cuban boatlift, and now with the Haitians that are being released into the community in order to avoid longer periods of detention. When we were doing this ritual last year, I shared with you the asylum statistics showed we were now at about 120,000 asylum applications, and now I share with you; we have about 140,000 petitions. That is up from 4,000 in 1979. So, you know how the game is being played with asylum—skillfully would be the nicest word I could use, but I have some others to describe it that would be more earthy.

So, there it is—140,000 asylum applications and a law so complex and absurd in many ways that it provides more due process to the person seeking asylum than it does to a U.S. citizen who is here and then the ironies of irony is if a person went to the American consul in the country where he lived and asked to determine his refugee status, that decision is made with a rubber stamp and a scribbled signature, and that is it. School is out. No appeal. No nothing.

But if you can get closer and closer to the United States, legally, illegally as an economic migrant, you are going to get something that these U.S. citizens don't get, and this is a due process procedure and appeal under present law which is arcane and Byzantine beyond belief. So you may understand the feeling I have about that.

Senator HAWKINS. I appreciate that, Mr. Chairman.

Senator SIMPSON. If we do nothing, we should correct our procedures of the misuse of asylum adjudication, and so forth.

You know fully what those provisions are in the new legislation, and the method of a full and complete hearing with or without counsel, open or closed as the applicant may ask in the total activity we provide and then appeal to an independent board, to the INS, an independent appeal to the Attorney General, but then any type of appeal that has to do with the right of habeas corpus.

I wonder if you feel in your view this will redress asylum reforms and the problems in Florida.

Senator HAWKINS. I think they would be an improvement. It will aid the alien status so that the individual also knows his or her status. We have that problem. The person does not know his or her status. These people call my office at 2 a.m. I like the summary exclusion provision in your bill. I think it is far more fair for the alien. He does not have to put up with long detentions.

As you know, we spent millions of dollars on the Krome Avenue North Detention Facility and as people come down to Florida, they said that is not the place to detain people. I went down there and toured the area. We built soccer and basketball courts. We paid them $1 an hour if they wanted to do something productive, but the mindset was there that they had come to this country to become American, if you will, and to go to work in a hurry and make a lot of money and buy a big car and get a lot of mortgage payments, and they felt they were being discriminated against by being detained even though inside conditions were better than they ever experienced in the country which they left. That malaise that sets in while we have this long, long process is such so that the summary exclusion, I think, is wonderful, and I like the absence of judicial review for asylum except with respect to habeas corpus. With those two, I would mark with a big gold star and urge that we include them at the top of the list.

Senator SIMPSON. Let me ask you another question.

You indicate your support of an overall cap on legal immigration. Why do you feel that is necessary?

Senator HAWKINS. Because everybody in the world wants to come to the United States. We have lists of countries whose people are suddenly coming to our shores illegally. I believe if you do not have a cap, you are going to have a sudden surge of refugees from a lot of countries that we may or may not believe are going to have an exodus.

We have intelligence that tells us if, indeed, there is no cap, you might as well have all of your docks and shores dusted off, because they will come in waves.

So, I think it introduces an element of accountability to the INS, to those of us who are trying to count these people and document where they came from. It gives us some kind of a bookkeeping process, and yet still gives plenty of protection for those who are truly seeking to escape from persecution. All the time we are tenderly talking about tough laws. We have to make that distinction. I think we are the most generous nation in the world, and have been since our founding to those who really and truly need protection from religious or political persecution. So, you have to take that into consideration in the quotients you are giving in this case, but I think the only way you will get a handle on it is to have the cap.

Senator **Simpson**. Let me ask you one file question.

Because of your very uniqueness in representing that State which is heavily impacted—ironically, the State of California is similarly impacted and has a different view and is not willing to support such legislation—Florida totally does support the mass effort. That is another curious oddity which I won't go into.

Let me ask you this: With the tremendous impact of both legal and illegal immigration, what do you foresee as the likely scenario to develop in the next 10 years if legislation is not enacted of any kind? What do you perceive would be the mood in your State or as you perceive it in Congress or the country, and then what alternatives would we have to remedy the gap left by doing nothing?

Senator **Hawkins**. By doing nothing, we are inviting, as I say, open arms and open heart to all nations. Americans are envied by every citizen of every other country as having freedoms and the opportunity to go up that ladder in economic pursuit of wealth and belongings that no other nation has. I think the new numbers show we are the fifth largest Spanish-speaking country in the world. I would predict without any action at all, we could become the second largest because of our sharing of land borders.

Florida experienced this by its water borders and the people came by boat, but when you consider crossing land borders without any cap, or any numbers, and without any interference, or any police powers at all to check where these people came from, I think you would have totally inundated cities that would start at the border and work their way up in Texas, California, all the States that share the land borders.

We just returned in excess of 5,000 Mexicans from Florida, and we don't share a land border with Mexico. They had to go to a little trouble to get there. We are told there are 50,000 Mexicans in Florida who are known by the INS—50,000 undocumented aliens.

Florida, of course, is only 90 miles away from Cuba so by water that is closer than we are to some land borders. They have devised ingenious schemes of going to the Bahamas and setting off in little boats put together with glue and a few feathers and hoping it will sail to Palm Beach or Miami.

So, it is important that we give a signal to the world that, yes, we will still be humanitarians and the torch is still lit in welcoming those from persecution; but just to have them come back across the border to see how they can like working in this particular climate is inviting disaster economically. I can tell you what it did to Florida. Those are the modest, minimum amounts that I recalled to you today, which we have discussed, and you have seen with your own eyes what it did to our complete State.

Right now we are having tremendous emigration in our State. The citizens of central Florida are moving to south Florida, leaving space for those who have more recently arrived. The people in Ocala, the horse country, are looking to the north, to the Georgia borders. It is causing great dislocation—something new in our State—and still it is the fastest growing. New Yorkers still want to come to Florida. I read an article last year as to why Long Islanders want to come down to Florida. It showed them in caravans coming down to Florida. As they come down, people from the southern part are moving in because of the crime that has infiltrated the lower portion of the State.

We would like you to use our State as a microcosm of what could happen clear across the country. I predict the Western States will soon get an impact from the Mexican people who come across by foot.

Senator SIMPSON. I have just one other question about H. 2 which is directed solely at agriculture.

Do you think the H. 2 provisions here in the legislation will adequately provide for Florida's agricultural interest which, of course, are also very critically important, too?

Senator HAWKINS. Yes, and Floridians and agricultural people in my State support it, too. I think those in other States—and I should not judge them summarily because I am not out there—tend to take labor less seriously. They say they are picking this crop and they will go back to their State. But I dare say if we put these restrictions on, we could get some Americans to go to work for a change.

What is happening in this country, we pay our citizens more not to work and they are getting welfare and other status type eligibilities. I have watched them sit on the square watching the immigrants. They sit and watch the agricultural workers pick the oranges while they are sitting on the square where you pick up your slip to go pick up the unemployment check. Maybe we have to redefine our system so that we don't pay people more not to work than we do to work. That is why we have to import laborers now.

Senator SIMPSON. I thank you very much, Paula.

Senator HAWKINS. We appreciate your help on this most serious problem facing the United States today.

Senator SIMPSON. We have next Senator Chiles, and Congressman Fish is apparently on his way.

I might add that this afternoon we will try to make some accommodations for some additional room. We will remove a couple of tables and put a table back there for any press people so you can scribble. Your handwriting is difficult enough, and with the table it will improve immeasurably. We will get that back there for you.

Tomorrow we will have the appropriations room as well as Monday so we will have a more adequate area.

It is a very distinct pleasure to have you here, Lawton, because, again, you represent a State with the most awesome impacts from illegal immigration and from misuse of the asylum procedures in the United States, and you have followed this so attentively. You have been very patient with me as I try to tell you what my agenda is; you have been understanding of that. Your patience must be wearing thin. But now that you have a new 6-year lease on life, surely your patience is adjusted now.

You have been very helpful to me, and I hear you clearly when you state your position so well, and I would appreciate it if you would do that with us this morning as we begin our hearings, looking toward markup before mid-March and in processing this legislation as promptly as we can.

STATEMENT OF HON. LAWTON CHILES, A U.S. SENATOR FROM THE STATE OF FLORIDA

Senator CHILES. Mr. Chairman, I thank the subcommittee for this opportunity to testify today on immigration reform.

Frankly, I regret that I have to appear before you again, and I am sure you regret that I am once again here before you in this process.

I thank you for your kind words, but I want to say how much I appreciate the efforts you and your subcommittee have given to this task. It is not one that anyone would like to have, and I think the work you did on it last year was fair and constructive. I know that you spent many, many hours listening to many, many people, and I know it was an arduous and tedious task. I compliment you on shepherding a bill through the Senate. I regret very much that that bill stalled and did not pass.

As you know, I came before the subcommittee in the summer of 1981 and then again last fall. Both appearances were prompted by the crisis conditions in Florida caused by the mass migration of some 200,000 Cubans and Haitians into our State during 1980 alone. Our State's people and resources were duly strained. The situation bordered on chaos in south Florida.

This subcommittee, and particularly its chairman, gave Florida's and my concerns sympathetic attention and consideration. Unfortunately, Florida got little more than concern and very little action. Today, the people of Florida are more than frustrated with the absence of action by the Congress and by the administration. I most certainly share that frustration.

As far back as 1981, the administration promised a contingency plan for action during immigration emergencies. Several drafts were shared with the Congress. Yet, we still have no final plan. In addition, the Justice Department proposed sites for new Federal detention facilities. These sites are yet to be named. Meanwhile, aliens are being moved into the Krome North facility in south Florida from other States. Florida was promised that this would not happen.

We were promised there would be permanent detention cites. That has not happened. We were promised Krome North would not be the recipient of immigrants coming from other places or illegal aliens. But, they have now been moved into the Krome North.

In 1982, the Senate passed the Immigration Reform and Control Act. It was a first major step. But failure by the House to act last year left us at ground-zero.

Now, it is 1983. We have no major reform in our immigration laws and no contingency plan in place. If a mass migration were to occur tomorrow into any State, the U.S. Government would again be inadequately prepared to react.

I would venture that the same dilemmas that struck Florida after the Cuban flotilla would again occur. For example, who could do what and who could go where? Who has the authority, or do we have the authority? And especially, who would pay?

Mr. Chairman, my State has been through that quandry, and I don't think we could handle another such crisis without severe effects. The effects of such an emergency could be lessened considerably on Florida and other States if only we examined the experiences of 1980 and took the necessary steps to secure a contingency plan for mass migrations.

EMERGENCY POWERS

I am here today to urge the Congress and especially the administration to finalize a policy on immigration emergencies. We cannot allow another country to dictate a position to us because of a lack of U.S. policy. We must be prepared. Castro and others must receive the message that we can control our borders.

Today, I will introduce legislation to give explicit powers to the U.S. Government for immigration emergencies. This emergency powers legislation is almost identical to the bill I introduced last year with which your subcommittee and you are familiar.

In addition to a contingency plan based on current law, I feel that it is necessary to have additional legal authorities for responding to declared immigration emergencies. Last year, I withdrew my legislation when I received assurances from both the Justice Department and the State Department that the administration does have authority under existing law to respond to mass migrations. The Justice Department indicated that it had developed such a plan to control future crisis situations. Yet, such a plan is still not in place and there is still considerable debate as to the legal authority for such powers.

Mr. Chairman, I stress that the purpose of this legislation is not to close our doors to legitimate refugees. The United States, as the epitome of a free, democratic republic, has a great responsibility to provide refuge to those fleeing persecution and repression. Yet, we cannot and must not accept every alien who arrives on our shores claiming persecution, simply because they are here, or because we enjoy a standard of life they would like to enjoy.

The legal definition of refugee is very narrow and should be reserved for those who are truly victims of persecution, the legal refugee.

INCREASING PENALTIES AGAINST PEOPLE SMUGGLING

Today, I will also be introducing another bill which addresses a more current problem in Florida: the smuggling of illegal aliens into the United States.

Unlike drug smuggling, which denotes a far more serious and destructive offense, people smuggling is not seen as all that bad, and it is not difficult to hide or disguise people. And there is that very American sentiment that people seeking refuge and a safe home should be allowed to do, and I agree as long as their entry is legal. But I take great issue with those who are illegally making millions off of others' desperation. These people smugglers are to whom my legislation is addressed.

The bill I am introducing today builds on the Immigration and Naturalization Act to strengthen the laws against the bringing in or harboring of illegal aliens. The legislation stiffens the penalties against the smuggling of people and more clearly details the criminal activities associated with smuggling which are also prohibited.

Specifically, the legislation would charge a person bringing an illegal alien into this country with a misdemeanor punishable by a $2,500 fine per alien or a 1-year imprisonment, or both.

A person charged with a second offense, or for bringing in an alien for commercial or financial gain, would be charged with a felony, fined up to $10,000 per alien or a 5-year imprisonment per alien, or both.

Anyone who transports, conceals, harbors, or shields an illegal alien would be charged with a felony, fined up to $10,000 and receive a 5-year sentence for each alien, or both. In addition, anyone who induces or encourages the smuggling of aliens will be charged and fined as if harboring an alien. This is directed at individuals and travel agencies like those in Miami which have openly directed interested parties to smuggling operations in South America and the Bahamas.

Under the provisions of this proposal, any conveyance used in the transporting of an illegal alien would be subject to seizure and forfeiture. My bill would make immigration law regarding seizure and forfeiture comparable to such laws in customs and drug enforcement. The burden of proof would be put on the suspect to demonstrate his innocense and reclaim his vehicle, if appropriate. Under current immigration law, the INS bears the burden of proof and must show that the person in charge of the conveyance is a consenting party in the crime before the vehicle can be forfeited. In addition, the INS must bear the financial and administrative costs. It is my understanding that no other law enforcement agency is subject to such liability.

The final provision of my legislation is one that I feel is most crucial to an effective curtailment of smuggling. My bill expressly gives Federal, State, and local law enforcement officials the authority to arrest persons suspected of bringing in, harboring, concealing or transporting an illegal alien. This authority expands upon existing law which only allows INS officials to make such arrests. This lack of authority in existing law had certainly impeded efforts to detect, detain and arrest those involved in the smuggling or harboring of illegal aliens. Often, it is the Coast Guard and local law enforcement officers who first detect alien smugglers. Under current practice, these officials can only report such spottings to the INS under a friendly agreement of cooperation. It is a gamble whether or not INS officials will have the capability to follow up on the detection report. The last I heard, the INS in south Florida had only two boats, one helicopter and one light plane, on loan, to detect and detain smugglers. It would certainly add to INS' ability to stop such smuggling if all law enforcement officers could detain and arrest such perpetrators.

Smugglers—people smugglers—must know that a stiff penalty awaits them if they are caught bringing in, assisting or harboring one illegal alien, let alone a boatload.

I encourage the State Department to work with foreign governments to find ways to stop the ringleaders of the smuggling operations whose bases of operation are located throughout South America and the Caribbean. However, by strengthening the U.S. immigration laws against smuggling, we can certainly discourage those who seek financial gains by guiding or assisting illegal aliens into this country. The more we apprehend such smugglers and hit them with stiff penalties, the harder it will be for the ringleaders to find persons willing to take the chance of getting caught smuggling.

In addition to cracking down on the smugglers, the bill will hopefully prevent the numerous swindles and tragedies which have befallen many of the aliens who hire the smuggling service. Reports from the Bahamas and Caribbean show that many aliens have been left penniless on these islands, after being tricked into believing that they are in Florida. The Bahamas in particular have become a haven for aliens, left with no money and provisions, and no means of going home or leaving for another country.

There have also been several known and probably many unknown instances of drownings and killings of aliens by the smugglers. The most publicized was that of the 21 Haitians who washed up on a Florida beach. Smugglers have been known to shove people off of boats when coming under surveillance or when close to shore. The smugglers are most often not held accountable and often are not even detained or sentenced under immigration law, let alone other criminal law.

Mr. Chairman, the other two bills I will introduce today do not represent major changes in immigration law. Yet, they will go far in providing the INS and law enforcement officials with a stronger hand in protecting our borders.

In conclusion, I ask that the subcommittee recognize that the problems of immigration are not just Florida's, and I know the subcommittee does recognize that, but we need to show that these problems should be the concerns of all Americans. People seeking refuge from persecution, warfare, and economic deprivation will continue to seek entry into the United States, probably in greater-and-greater numbers. It is true that many will probably enter through Florida. But we must all be prepared.

Florida has long been known as a tropical paradise. Our climate and resources add to that. Yet, this same southern exposure has positioned us as a conduit into the United States from many parts of the world. Florida's history is continually marked with periods of smuggling. At one point, the cargo was Africans who were sold on docks as slaves and servants. During the Civil War, gun smuggling was conducted on a large scale. Rum was the overflowing cargo during the Prohibition. More recently, the cargo has become even more lucrative with the flow of drugs from South America and Mexico. Today, we face an onslaught of people smugglers.

The influx of people will not stop. Desperate people yearning for all the United States has to offer will continue to find ways to enter.

Central America is a time-bomb. The continual warfare has sent thousands fleeing from El Salvador and Nicaragua. Only the Gulf of Mexico separates Central America from the Southern United States. A major incident could cause an immediate mass migration. Yet, we are not prepared.

South Americans are buying their way into America. The more wealthy can continue to use influence to gain legal entry. The less affluent will continue to try to buy passage into the United States. People smugglers will never run out of cargo. The professional operations of Colombia are spreading throughout South America. Yet, we have little control.

Haitians are still seeking entry into the United States. Those who have been refused entry by our Embassy are learning that boats to south Florida leave daily from numerous islands of the Bahamas. They continue to come. Yet, we can't regulate the influx.

As long as the Castro regime controls Cuba, there will be Cubans who want to join family and friends in the United States They continue to seek entry, no matter the cost.

Mr. Chairman, changes in world conditions will continue to influence our immigration policies. We must reform our immigration laws to meet these changes. We cannot continue down the same path, stumbling when emergencies occur. We must face the challenge and stand up to the demand.

I know the efforts that you are going to extend in this behalf, and I certainly wish you God's speed in your efforts.

Senator SIMPSON. Thank you very much, Lawton.

I have just a couple of quick comments, and I would love having your response.

You represent a State which has had to bear the brunt in this area because of our inability to correct things. I know you are very supportive of the asylum provisions in the legislation. Since we last visited, we have had 140,000 petitions for asylum now instead of the 4,000 we had in 1979—up from about 20,000 from last year. So, we know that that system is being misused. That is obvious.

I would ask you, what do you see as the scenario to develop in the next 10 years in your State and the mood of the country with respect to the alternatives we have left if we were to do absolutely nothing, and then in this session nothing would come to fruition? What do you foresee?

Senator CHILES. Mr. Chairman, I think what Florida has experienced would be such an infinitesimal tip of the iceberg that we would wonder why we were so concerned about 200,000 people coming into one place in 1 year. I think poised to come in would be literally millions of people. I think we would not recognize the United States as we see the United States today within a period of 10 years if we do not regain control of our borders and of our policies so that we can have a rational, a compassionate and meaningful policy in regard to immigration.

Senator SIMPSON. Let me ask another question because I know you are deeply interested in emergency powers.

Senator CHILES. Let me just interrupt to raise another issue.

I read with horror, as I know you did about what happened recently in a province in India where a massacre had taken place. We wonder how something that macabre can happen.

Yet, Mr. Chairman, I just have to say that I have been reflecting on that and trying to understand how in the world that could happen in India. If we have no policy in this country and have the kind of influx of people that I have just described, then the people themselves in this country might rise up, if we fail to lawfully set procedures in place to take the kinds of actions we must take.

I just had to add that, Mr. Chairman.

Senator SIMPSON. I am pleased that you did because I do not think I would have touched on it. Adding to that the dimension of what is happening in Nigeria and Ghana, I would commend to anyone who is interested an article by William Raspberry wherein he is talking to his cabbie friend, as he often does in some of his articles. It is an extraordinary column about Nigerian blacks pushing Ghanaian blacks from their country, where they do not seem to have any choice. They have kept some of the more skilled persons and then determined to rid themselves of those who take lesser positions in their society. There is an extraordinary outpush over there. So, there cannot be what we hear, as we deal with this issue, that there is an ethnic overtone to this, an ancient ethnic touch as we always approach reform about doing something to the Germans or to the Asians and now anything Hispanic. I do not care to be involved in something like this at any time, but those are very disturbing trends including the one I just cited and the one in Nigeria. I don't think this is just another horror story but it does dribble down through my conscience as to what it is.

I thank you for sharing your views with us. Thank you.

[The prepared statement of Senator Chiles follows:]

PREPARED STATEMENT OF SENATOR LAWTON CHILES

Good morning. I thank the Subcommittee for this opportunity to testify today on immigration reform.

Frankly, I regret that I have to appear before you again today. As you're well aware, I came before the Subcommittee in the summer of 1981 and then again last fall. Both appearances were prompted by the crisis conditions in Florida caused by the mass migration of some 200,000 Cubans and Haitians into our State during 1980 alone. Our State's people and resources were duly strained. The situation bordered on chaos in South Florida.

This Subcommittee, and particularly its Chairman, gave Florida's and my concerns sympathetic attention and consideration. Unfortunately, Florida got little more than concern and very little action. Today, the people of Florida are more than frustrated with the lack of action by the Congress and by the Administration. I most certainly share that frustration.

As far back as 1981, the Administration promised a contingency plan for action during immigration emergencies. Several drafts were shared with the Congress. Yet, we still have no final plan. In addition, the Justice Department proposed sites for new Federal detention facilities. The sites are yet to be named. Meanwhile, aliens are being moved into the Krome North facility in South Florida from other states. Florida was promised that this would not happen.

In 1982, the Senate passed the Immigration Reform and Control Act. It was a first major step. But, failure by the House to act last year left us at ground-zero.

Now, it is 1983. We have no major reform in our immigration laws and no contingency plan in place. If a mass migration were to occur tomorrow into any state, the U.S. government would again be inadequately prepared to react.

I would venture that the same dilemmas that struck Florida after the Cuban flotilla would again occur. For example, who could do what and who could go where? Who has the authority, or do we have the authority? And especially, who would pay?

Mr. Chairman, my State has been through that quandry and I don't think we could handle another such crisis without severe effects.

The effects of such an emergency could be lessened considerably on Florida and other states if only we examined the experiences of 1980 and took the necessary steps to secure a contingency plan for mass migrations.

I am here today to urge the Congress and especially the Administration to finalize a policy on immigration emergencies. We must never let another country dictate a position to us because of a lack of U.S. policy. We must be prepared. Castro and others must receive the message that we can control our borders.

Today, I will introduce legislation to give explicit powers to the U.S. government for immigration emergencies. This emergency powers legislation is almost identical to the bill I introduced last year with which the Subcommittee is familiar.

In addition to a contingency plan based on current law, I feel that it is necessary to have additional legal authorities for responding to declared immigration emergencies. Last year, I withdrew my legislation when I received assurances from both the Justice Department and the State Department that the Administration does have authority under existing law to respond to mass migrations. The Justice Department indicated that it had developed such a plan to control future crisis situations. Yet, such a plan is still not in place and there is still considerable debate as to the legal authority for such powers.

My proposed legislation would lay the groundwork for such a plan. First, the bill would allow the President to declare an immigration emergency if a substantial number of documented aliens are about to embark, or have embarked, for U.S. shores and in his judgement, additional procedures and resources are needed to respond. Within 48 hours, the President would notify the President Pro-Tempore of the Senate and the Speaker of the House that such a declaration had been made and the reasons for such action. The emergency period would be for 120 days or sooner if the President so determines. The emergency could also be extended for an additional 120 days.

During such a declared emergency, the President would have the authority to take special steps to cut off a massive influx of illegal aliens. In order to prevent the likes of a Mariel boatlift or mass migration of thousands of Haitians from the

Bahamas, the President would have the authority to restrict departures of U.S. registered boats from ports and harbors which could be used as staging points for bringing aliens into the U.S. Fines and penalties could be imposed on those who violate the restrictions. However, vessels not involved in the migration could obtain authorization to leave the port. In addition, government agencies such as the Coast Guard would be allowed to assist in preventing unauthorized immigration by intercepting ships bound for staging areas. In order to assure that this aspect of the contingency plan is effectively enforced, the President would be able to use the resources of other Federal agencies.

Under this legislation, an alien who arrives in the U.S. without proper documentation could be summarily excluded from entering the U.S. if he does not appear to have a legitimate asylum claim. This provision could also be used to stop undocumented aliens, traveling by sea to the U.S., before they reach U.S. territorial waters, utilizing the President's existing authority to interdict foreign vessels on the high seas. The Attorney General would develop procedures for deciding whether an alien shall be excluded or admitted to the U.S. for a hearing.

And, my bill would allow for aliens who are admitted to the U.S. to be held in detention at Federal facilities specified by the President until their immigration status is determined. Aliens who are ineligible for asylum in the U.S. would be returned to the country from which they came, or a third country. Current law requires that the aliens be returned to the country from which they came. In both the Cuban and Haitian influxes, this would have been most impractical because the Cuban government refused to repatriate their people and many of the Haitians had come from the Bahamas, not Haiti. This provision of my bill would make the law more flexible and hopefully, more enforceable.

Mr. Chairman, I stress that the purpose of this legislation is not to close our doors to legitimate refugees. The United States, as the epitome of a free, democratic republic, has a great responsibility to provide refuge to those fleeing persecution and repression. Yet, we cannot and must not accept every alien who arrives on our shores claiming persecution, simply because they are here. The legal definition of refugee is very narrow and should be reserved for those who are truly victims of persecution. Should we relax this definition as we have in the last few years, we are not only doing a great injustice and disservice to our own government and its people, but also to the alien. We must never again be scarred with the likes of the over-crowded Krome North facility. Such "policy" was a disgrace to us as well as to the many aliens. It could be avoided if an efforceable contingency plan were in place.

Mr. Chairman, you and the Subcommittee members are well-versed on the emergency powers issue. I will spend no more time on the subject but to say, we have waited too long. I am going to keep pressing the Administration for such a plan and hope the Subcommittee joins in this call for action.

Today, I will also be introducing another bill which addresses a more current problem in Florida: the smuggling of illegal aliens into the U.S. Over the past few years, thousands of undocumented aliens have crossed our borders. These persons are often assisted by persons in the U.S. In Florida alone, it is estimated that as many as 2,000 persons a month are being smuggled into our state from Haiti, Cuba, and Dominican Republic, and South America. Lately, aliens from as far away as Pakistan and Bangladesh have joined in the influx.

"People smuggling" has become a multi-million dollar business in South America, the Caribbean and South Florida. According to the Miami Herald, which conducted a major investigation of the smuggling, at least 14 major organizations exist in South Florida which operate or assist in the smuggling of aliens for financial gain. Similar operations in the Bahamas and South America are more profitable. Persons with illegal or no documentation are smuggled into Florida by land or air, for a price. Our embassy and consulates throughout South America and the Caribbean are at a loss when it comes to dealing with those who seek aliens as cargo to bring to the U.S. The embassy staffs are burdened with persons who seek legal entry into the U.S. It is here where the problem begins. Thousands seek entry into the U.S. daily. Those with money and influence can most often gain legal entry, in time. However, the less affluent often spend their last dime to buy illegal papers or a place on a boat or plane which is smuggling people into the Bahamas and the U.S. Many of these people are desperate and desperate people will try almost anything - no matter the cost.

Most of the smuggling operations are known to the U.S. and foreign governments. Yet, little cooperation exists between countries to stop the smuggling. Last year, after working with our State Department, the government of the Bahamas finally acted to require visas instead of mere tourist cards for entry into the islands. However, this has not stopped the smugglers. They are experienced professionals and are using private airstrips and islands where they can drop their cargo.

Frankly, foreign governments don't care who leave their country and state simply that it isn't illegal. Unlike drug smuggling which denotes a far more serious and destructive offense, people smuggling is not seen as all that bad, and, it is not difficult to hide or disguise people. And, there is that very American sentiment that people seeking refuge and a safe home should be allowed to do so. I agree - as long as their entry is legal. But, I take GREAT issue with those who are illegally making millions off of other's desperation. These people smugglers are to whom my legislation is addressed.

There is an obvious, demonstrated need for clarifying and strengthening our laws regarding the bringing in and harboring of illegal aliens. Experience, as well as the courts, have called for change. One U.S. district court concluded that the current law against assisting illegal aliens only applies to "surreptitious entries." In the court's view, the thousands of Cubans who came with the flotilla did not come surreptitiously and, therefore, those who assisted them were not guilty of violating immigration laws. My bill would clearly prohibit any bringing in or harboring of illegal aliens on a day-to-day basis.

Mr. Chairman, this clarification is essential if we are to effectively curtail the smuggling of illegal aliens into the U.S. I want to make certain that if someone is assisting illegal aliens into the U.S. under the dark of night or in broad daylight, it is a criminal offense and will be enforced and prosecuted as such.

The bill I am introducing today builds on the Immigration and

Nationality Act to strengthen the laws against the bringing in or harboring of illegal aliens. The legislation stiffens the penalties against the smuggling of people and more clearly details the criminal activities associated with smuggling which are also prohibited.

Specifically, the legislation would charge a person bringing an illegal alien into this country with a misdemeanor punishable by a $2,500 fine per alien or a one-year imprisonment, or both.

A person charged with a second offense, or for bringing in an alien for commercial or financial gain, would be charged with a felony, fined up to $10,000 per alien or a 5-year imprisonment per alien, or both.

Anyone who transports, conceals, harbors or shields an illegal alien, would be charged with a felony, fined up to $10,000 and receive a 5-year sentence for each alien, or both. In addition, anyone who induces or encourages the smuggling of aliens will be charged and fined as if harboring an alien. This is directed at individuals and travel agencies like those in Miami which have openly directed interested parties to smuggling operations in South America and the Bahamas.

Under the provisions of this proposal, any conveyance used in the transporting of an illegal alien would be subject to seizure and forfeiture. My bill would make immigration law regarding seizure and forfeiture comparable to such laws in customs and drug enforcement. The burden of proof would be put on the suspect to demonstrate his innocence and reclaim his vehicle, if appropriate. Under current immigration law, the INS bears the burden of proof and must show that the person in charge of the conveyance is a consenting party in the crime before the vehicle can be forfeited. In addition, the INS must bear the financial and administrative costs. It is my understanding that no other law enforcement agency is subject to such liability.

Mr. Chairman, the weakness and impracticality of the current immigration law regarding seizure and forfeiture were demonstrated during the Cuban flotilla when hundreds of vessels were involved. It was totally unrealistic for INS to bear the burden of proof during such a mass migration. I believe that my legislation would certainly strengthen the hand of INS to seize vessels or aircrafts when there is probable cause.

The final provision of my legislation is the one that I feel is most crucial to an effective curtailment of smuggling. My bill expressly gives Federal, state and local law enforcement officials the authority to arrest persons suspected of bringing in, harboring, concealing or transporting an illegal alien. This authority expands upon existing law which only allows INS officials to make such arrests. This lack of authority in existing law has certainly impeded efforts to detect, detain and arrest those involved in the smuggling or harboring of illegal aliens. Often, it is the Coast Guard and local law enforcement officers who first detect alien smugglers. Under current practice, these officials can only report such spottings to the INS under a friendly agreement of cooperation. It is a gamble whether or not INS officials will have the capability to follow-up on the detection report. The last I heard, the INS in South Florida had only 2 boats, one helicopter and one light plane (on loan) to detect and detain smugglers. It would certainly add to INS' ability to stop such smuggling if all law enforcement officers could detain and arrest such perpetrators. We have encouraged such cooperation against drug smuggling and it has been effective. I believe that the problem of alien smuggling has grown to such proportions that stiffer laws are necessary to arrest those who are profiting from people smuggling.

Mr. Chairman, these smuggling operations will continue until the U.S. government cracks down as they have with drug law enforcement. The perpetrators must know that a stiff penalty awaits them if they are caught bringing in, assisting or harboring one illegal alien, let alone a boat load. I encourage the State Department to work with foreign governments to find ways to stop the ringleaders of the smuggling operations whose bases of operations are located throughout South American and the Caribbean. Such activity is beyond the scope of the INS. However, by strengthening the U.S. immigration laws against smuggling, we can certainly discourage those who seek financial gains by guiding or assisting illegal aliens into this country. The more we apprehend such smugglers and hit them with stiff penalties, the harder it will be for the ringleaders to find persons willing to take the chance of getting caught smuggling.

In addition to cracking down on the smugglers, the bill will hopefully prevent the numerous swindles and tragedies which have befallen many of the aliens who "hire" the smuggling service. Reports from the Bahamas and Caribbean show that many aliens have been left penniless on these islands, after being tricked into believing that they are in Florida. The Bahamas in particular have become a haven for aliens, left with no money and provisions, and no means of going home or leaving for another country.

There have also been several known and probably many unknown instances of drownings and killings of aliens by the smugglers. The most publicized was that of the 21 Haitians who washed up on a Florida beach. Smugglers have been known to shove people off of boats when coming under surveillance or when close to shore. The smugglers are most often not held accountable and often are not even detained or sentenced under immigration law, let alone other criminal law.

Mr. Chairman, the two bills I will introduce today do not represent major changes in immigration law. Yet, they will go far in providing the INS and law enforcement officials with a stronger hand in protecting our borders.

In conclusion, I ask that the Subcommittee recognize that the problems of immigration are not just Florida's. They should be the concern of all Americans. People seeking refuge from persecution, warfare and economic deprivation will continue to seek entry into the U.S., probably in greater and greater numbers. It is true, that many will probably enter through Florida. But, we all must be prepared.

Mr. Chairman, Florida has long been known as a tropical paradise. Our geographical placement on the continent as the southern most state gifts us with glorious shorelines, resources and climate. Yet, this same southern exposure has positioned us as a conduit into the U.S. from many parts of the world. Florida's history is continually marked with periods of smuggling. At one point, the cargo was Africans who were sold on docks as slaves and servants. During the Civil War, gun smuggling was conducted on a large scale. Rum was the overflowing cargo during the Prohibition.

More recently, the cargo has become even more lucrative with the flow of drugs from South America and Mexico. Today, we face an onslaught of people smugglers.

The influx of people will not stop. Desperate people yearning for all the U.S. has to offer will continue to find ways to enter.

Central America is a time-bomb. The continual warfare has sent thousands fleeing from El Salvador and Nicaragua. Only the Gulf of Mexico separates Central America from the southern U.S. A major incident could cause an immediate mass migration. Yet, we are not prepared.

South Americans are buying their way into America. The more wealthy can continue to use influence to gain legal entry. The less affluent will continue to try to buy passage into the U.S. People smugglers will never run out of cargo. The professional operations of Columbia are spreading throughout South America. Yet, we have little control.

Haitians are still seeking entry into the U.S. Those who have been refused entry by our embassy are learning that boats to South Florida leave daily from numerous islands of the Bahamas. They continue to come. Yet, we can't regulate the influx.

As long as the Castro regime controls Cuba, there will be Cubans who want to join family and friends in the U.S. They continue to seek entry, no matter the cost.

Mr. Chairman, changes in world conditions will continue to influence our immigration policies. We must reform our immigration laws to meet these changes. We cannot continue down the same path, stumbling when emergencies occur. We must face the challenge and stand up to the demand.

Senator **Simpson**. Now, exhibit A from the House of Representatives.

Hamilton Fish, it is a great pleasure to have you here. I have come to know you and have worked with you closely on the Select Committee on Immigration and Refugee Policy, and that was quite an experience. We can both say that, and you were so helpful, so wise, so able, and you worked so hard. I remember so well. In that service, I have respect for you,

Knowing that you have now been elevated to the ranking member of the entire House Judiciary Committee, you are in a doubly advantageous position.

I look forward to your comments.

STATEMENT OF HON. HAMILTON FISH, JR., A U.S. REPRESENTATIVE FROM THE STATE OF NEW YORK

Mr. **Fish**. Thanks a lot, Senator.

If I can have my complete statement accepted for the record, I will try to just hit the highlights in commenting on the legislation.

Senator **Simpson**. Your full statement will be accepted for the record, and you may proceed with your highlights.

Mr. **Fish**. Mr. Chairman, I welcome this opportunity to commend you for these hearings. I want to commend you personally for your resilience. Hearing that you were suiting up again after the last Congress provided an example to me, as a junior member of the subcommittee in the House, to keep my hand in.

Years of work have been devoted to fashioning the major immigration reform legislation referred to as the "Simpson-Mazzoli bill." The Select Commission on Immigration and Refugee Policy, with the participation of three members of this subcommittee held 12 regional hearings and conducted 24 indepth consultations. A Cabinet-level task force, carefully scrutinized the Commission's findings. I felt that although we were unable to please everyone, nevertheless a conscientious effort was made to accommodate diverse concerns and balance competing interests. In a year and a half, we all spent long hours trying to accommodate the enormously diverse and varied interests concerned with this legislation. I know how disappointing it must have been to you not to have seen this legislation passed in the final days of our last session.

Like you, I am convinced that the legislation still is vitally needed. I think that fact is undisputed. The American people are calling on us to confront the lack of control over our borders. I think it is our responsibility to act with firmness to deter future illegal entry and, at the same time, reaffirm America's historic commitment to accept legal immigrants from other lands.

Employer sanctions, the centerpiece of immigration law enforcement, is a key provision in this bill. It directly hits the opportunities for employment that we know are the magnet—the term coined by Father Ted, our leader on the Commission—that brings people to our shores.

The concept of employer sanctions has received the support of a number of administrations, favorable votes on two occasions in the House and once in the Senate, and the endorsement by a 14 to 2 vote of the Select Commission on Immigration and Refugee Policy.

This legislation specifically guards against the possibility of imposing sanctions on employers who hire illegal aliens unknowingly.

S. 529, moreover, has been designed to protect ethnic minorities against invidious discrimination.

I would like to direct your attention to the House Judiciary Committee's provisions that strengthen the protections against discrimination. We directed the Civil Rights Commission to monitor employer sanctions. We directed the Attorney General, the Secretary of Labor, and the Chairman of the Equal Employment Opportunity Commission to establish a task force to review and investigate complaints of discrimination. But I must say to you that what you and I view as the centerpiece—employer sanctions—remains the stumbling block on the road to success for this legislation.

Much of the 5 hours of general debate in the House and practically all of the hours we spent considering the first few amendments to this bill were utilized by a number of our Members criticizing this aspect of the legislation—in spite of our effort to point out the provisions put in there to make sure that there would not be discrimination. A number of our colleagues felt that, nevertheless, there would be discrimination against Hispanics in employment. I say that to you because I hope in the course of your hearings this issue can be aired thoroughly and a case made if there appears to be a better alternative to enforcement than what is provided in your bill. The burden is on those who criticize our 4 years of work to come up with a better alternative.

Another focus of the bill is reform of the adjudication process. As we know, today exclusion, deportation, and asylum adjudications are beset with crippling delays and backlogs. I suggest to you that while both bills eliminate needless layering of review, the House version preserves the role of the Federal judiciary in adjudicating a greater range of liberty related matters that arise in immigration cases. I recommend the House Judiciary Committee bill for your consideration.

S. 529, in another title, asserts greater control over legal immigration by attempting to plan in advance for projected increases in numerically exempt admissions. H.R. 1510, by contrast, focuses almost exclusively on issues related to the presence of undocumented aliens in the United States today and generally does not address the subject of permanent legal immigration. My personal belief is that the amendments adopted by the House subcommittee in May of 1982—to title II, dealing with legal immigration—should be scrutinized in your work on that title as well.

Serious consideration also should be given, in my judgment, to allocating 50,000 numbers per year for each of 5 years to clear backlogs. The United States has an obligation to American citizens who have acquired priority dates for their relatives in accordance with existing law. I think we should take appropriate account of pending petitions.

You will recall that the Select Commission recognized this issue and recommended a figure of 100,000 per year.

S. 529, finally, recognizes that substantial numbers of illegal aliens are here to stay and responds realistically and humanely to their plight. As the chairman knows, I agree that we must display compassion for those aliens who have become a part of our society.

S. 529 represents an appropriate compromise between the views of those who would eliminate legalization provisions entirely or only advance the registry date to 1973, on the one hand, and those who would provide lawful permanent resident status to persons who entered prior to January 1, 1982.

I look forward to following your hearings on this critically important bill. The chairman of this subcommittee deserves a great deal of credit for his outstanding leadership in crafting this legislation and sheparding it through the Senate last year, and resuming the battle in this Congress.

I am confident that this year we can bring an important law reform effort to fruition.

Senator SIMPSON. Thank you very much, Ham. I appreciate your views on employer sanctions because you are the very essence of this legislation.

It is ironic in a sense that the employer sanctions in their purest form emanated from the House of Representatives twice in recent years only to come here and never even be addressed by the Judiciary Committee, under the leadership of Ted, and prior to that, so it is obvious that the House of Representatives, if given a vote, would support employer sanctions in their purest form because, in my view, it is the very guts of the legislation. So, we will be working toward that.

We will be having some public seminars with various Hispanic groups who believe that employer sanctions are not discriminatory. We will simply have a forum for those who believe that it is not a discriminatory process in any way, sharing the podium with those who, as you know, in the House debate that it is. I will be looking forward to that and will be participating.

Some say, of course, that that would increase the potential for employment discrimination.

I would ask your views as to how you would perceive the scenario in this country if we were to do absolutely nothing and roll up the old bedroll after this session and say we accomplished nothing and now you go solve it and we will still be there to lend whatever assistance we can, but tell me what you see as the scenario if we do nothing again.

Mr. FISH. I hate to contemplate that again, Senator. We have had incidents of violence already, some of strictly a racial nature. As time goes on and as hundreds of thousands more enter the country illegally, I think the boiling point will get closer. I would hate to think of what the reaction might be, not just toward illegal aliens. In 1980, when people began to focus on this issue, they jumbled together legal immigrants, illegal migrants, and Cuban-Haitian entrants. We would find a massive reaction against the legal admission of aliens and refugees, admissions that have occurred in the finest traditions of this country. I think the prospect of such a reaction provides a compelling reason for us to take action this time.

Senator SIMPSON. I appreciate always your thoughtful approach to it. It is good to have you right where you are as we now process it again, hopefully through the Senate and on through the House where I detect a different feeling of leadership. Statements by Jim Wright are very heartening to me with respect to processing this legislation, realizing the importance of it, and I think those things augur well for seeing it presented.

There were two test votes and the frustrating House experience and, yet, both of them indicate if you look at it the legislation would pass, if it could get to a vote. I think that is what was indicated.

So, you are on the point over there, you and my colleague, Ron Mazzoli, so this couldn't be in better hands because you two people know intimately what we are up to and the need for it. You are not obsessed by it but are thoughtfully presenting it, and I deeply appreciate that.

Mr. **Fish**. Thank you, Senator. We will start our hearings on March 1 and go for several weeks and then hold a markup in April. There are approximately 130 to 140 Members against the legislation.

Thank you very much.

Senator **Simpson**. Thank you very much, Ham.

[The prepared statement of Representative Hamilton Fish, Jr., follows:]

Prepared Statement of Representative Hamilton Fish, Jr.

I welcome the opportunity today to commend Senator Simpson and the Members of the Senate Subcommittee on Immigration and Refugee Policy for beginning hearings on the Immigration Reform and Control Act of 1983. Years of work have been devoted to fashioning the major immigration legislation often referred to as the "Simpson-Mazzoli bill." The Select Commission on Immigration and Refugee Policy -- with the participation of three Members of this Subcommittee -- held twelve regional hearings in different parts of the United States, conducted 24 in-depth consultations, and authorized extensive social science and legal research. A Cabinet-level task force carefully scrutinized the Select Commission's findings and recommendations. In the last Congress, this Subcommittee and its House counterpart heard numerous witnesses from Federal, State, and local governments, business and labor organizations, industry and agriculture, religious and ethnic groups, and civil liberties organizations. Each of our Judiciary Committees, although unable to please everyone, made a conscientious effort to accommodate diverse concerns and balance competing interests.

Although the Senate passed its bill by the decisive margin of 80-19, the House regrettably failed to call up our bill until the eleventh hour of the lame-duck session. Last year we ran out of time -- but this year we are determined to move this legislation to final passage at an early date!

The American people, for many years, have called upon the Congress to confront our lack of control over our borders. We have the opportunity, in this Congress, to act with firmness to deter future illegal entry and at the same time reaffirm America's historic commitment to accept legal immigrants from other lands.

Employer sanctions, the centerpiece of immigration law enforcement, is a key provision in this bill. S. 529 attempts to discourage the annual flow of hundreds of thousands of undocumented aliens by removing the major inducement to illegal

MIGRATION -- THE MAGNET THAT DRAWS PEOPLE TO OUR SHORES -- THE OPPORTUNITIES FOR EMPLOYMENT. THE CONCEPT OF EMPLOYER SANCTIONS HAS RECEIVED THE SUPPORT OF A NUMBER OF ADMINISTRATIONS, FAVORABLE VOTES ON TWO OCCASIONS IN THE HOUSE AND ONCE IN THE SENATE, AND THE ENDORSEMENT -- BY A 14-2 VOTE -- OF THE SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY. ALTERNATIVES HAVE BEEN CONSIDERED AND FOUND WANTING. EMPLOYER SANCTIONS CONSTITUTE THE ONLY EFFECTIVE OPTION -- IN THE JUDGMENT OF MANY PEOPLE WHO HAVE FOCUSED ON THE PROBLEM OF ILLEGAL IMMIGRATION.

THIS LEGISLATION SPECIFICALLY GUARDS AGAINST THE POSSIBILITY OF IMPOSING SANCTIONS ON EMPLOYERS WHO HIRE ILLEGAL ALIENS UNKNOWINGLY. THE LANGUAGE OF SECTION 101 PROVIDES THAT IT IS UNLAWFUL TO HIRE AN ALIEN "KNOWING THE ALIEN IS AN UNAUTHORIZED ALIEN . . . WITH RESPECT TO SUCH EMPLOYMENT . . . ." AN EMPLOYER THAT "ESTABLISHES THAT IT HAS COMPLIED IN GOOD FAITH" WITH THE VERIFICATION REQUIREMENTS "HAS ESTABLISHED AN AFFIRMATIVE DEFENSE . . . ." I BELIEVE THE STATUTORY LANGUAGE AS WELL AS THE LEGISLATIVE HISTORY WILL PROTECT AMERICAN BUSINESSES BY LIMITING THE APPLICATION OF EMPLOYER SANCTIONS TO "KNOWING" VIOLATIONS. THE BUSINESS ROUNDTABLE, BY ENDORSING SIMILAR LEGISLATION LAST YEAR, EXPRESSED ITS FAITH THAT EMPLOYERS WILL RECEIVE FAIR TREATMENT.

S. 529, MOREOVER, HAS BEEN DESIGNED TO PROTECT ETHNIC MINORITIES AGAINST INVIDIOUS DISCRIMINATION. EMPLOYERS OF FOUR OR MORE PERSONS WHO FAIL TO FOLLOW PAPERWORK/VERIFICATION REQUIREMENTS WILL FACE A $500 CIVIL PENALTY ("FOR EACH INDIVIDUAL WITH RESPECT TO WHICH SUCH VIOLATION OCCURRED") REGARDLESS OF WHETHER THE INDIVIDUAL TURNS OUT TO BE A U.S. CITIZEN OR LAWFUL PERMANENT RESIDENT ALIEN. THIS SANCTION SHOULD DISCOURAGE EMPLOYERS FROM APPLYING THE EMPLOYER SANCTIONS STATUTE IN A DISCRIMINATORY WAY.

I BELIEVE THE HOUSE JUDICIARY COMMITTEE STRENGTHENED THE PROTECTIONS AGAINST DISCRIMINATION IN THE COURSE OF OUR MARKUP LAST YEAR. ONE IMPORTANT PROVISION INSERTED BY THE COMMITTEE

DIRECTED THE CIVIL RIGHTS COMMISSION TO MONITOR THE ENFORCEMENT OF EMPLOYER SANCTIONS. IN ADDITION, THE HOUSE VERSION OF THIS BILL -- WHICH REFLECTS HOUSE JUDICIARY COMMITTEE ACTION LAST YEAR -- DIRECTS THE ATTORNEY GENERAL, THE SECRETARY OF LABOR, AND THE CHAIRMAN OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION TO ESTABLISH A TASK FORCE TO REVIEW AND INVESTIGATE COMPLAINTS OF DISCRIMINATION. ANOTHER PROVISION OF H.R. 1510 REQUIRES THE PRESIDENT TO CONSULT WITH CONGRESS EVERY SIX MONTHS CONCERNING THE IMPLEMENTATION OF EMPLOYER SANCTIONS -- INCLUDING POSSIBLE DISCRIMINATION IN EMPLOYMENT.

MANY OF THE MEMBERS OF OUR RESPECTIVE JUDICIARY COMMITTEES ARE CONFIDENT THAT EXISTING CIVIL RIGHTS LEGISLATION, STATE AND FEDERAL, WILL PROVIDE AN IMPORTANT MEASURE OF PROTECTION IN A SUBSTANTIAL NUMBER OF CASES OF DISCRIMINATION BASED ON NATIONAL ORIGIN. CONGRESSIONAL OVERSIGHT, MOREOVER, WILL HELP INSURE THAT THE NEW STATUTE IS PROPERLY ENFORCED.

ANOTHER MAJOR FOCUS OF THIS LEGISLATION IS REFORM OF THE IMMIGRATION ADJUDICATION PROCESS. TODAY, EXCLUSION, DEPORTATION, AND ASYLUM ADJUDICATIONS ARE BESET WITH CRIPPLING DELAYS. S. 529 UPGRADES THE ADMINISTRATIVE ADJUDICATORY STRUCTURE -- BY ATTEMPTING TO PROVIDE IT GREATER INDEPENDENCE AND STATURE AND THUS MINIMIZE THE NEED FOR PROTRACTED JUDICIAL INVOLVEMENT. THE SENATE AND HOUSE BILLS DO DIFFER, HOWEVER, IN THE DEGREE OF INDEPENDENCE ACCORDED IMMIGRATION ADJUDICATORS -- WITH THE HOUSE OPTING FOR MORE EXPLICIT SAFEGUARDS. BOTH BILLS ELIMINATE NEEDLESS LAYERING OF REVIEW -- BUT THE HOUSE VERSION PRESERVES THE ROLE OF THE FEDERAL JUDICIARY IN ADJUDICATING A GREATER RANGE OF LIBERTY-RELATED MATTERS THAT ARISE IN IMMIGRATION CASES. WE HAVE STRUGGLED -- IN THE SENATE AND THE HOUSE -- WITH THE DILEMMA OF HOW BEST TO COMBINE DUE PROCESS WITH NECESSARY REFORMS.

S. 529, IN ANOTHER TITLE, ASSERTS GREATER CONTROL OVER LEGAL IMMIGRATION BY ATTEMPTING TO PLAN IN ADVANCE FOR PROJECTED INCREASES IN NUMERICALLY EXEMPT ADMISSIONS. H.R. 1510, BY CONTRAST, FOCUSES ALMOST EXCLUSIVELY ON ISSUES RELATED TO THE

PRESENCE OF UNDOCUMENTED ALIENS IN THE UNITED STATES TODAY AND GENERALLY DOES NOT ADDRESS THE SUBJECT OF PERMANENT LEGAL IMMIGRATION. ALTHOUGH THE SCOPE OF THE SENATE AND HOUSE BILLS DIFFER TODAY, LAST YEAR OUR RESPECTIVE SUBCOMMITTEES BEGAN WORK WITH BILLS THAT IMPOSED A CEILING ON LEGAL ADMISSIONS AND REFORMED THE PREFERENCE SYSTEM. I BELIEVE AMENDMENTS ADOPTED BY THE HOUSE SUBCOMMITTEE IN MAY 1982 -- WHICH I COMMEND TO YOUR CONSIDERATION -- HELPED TO SAFEGUARD THE PRINCIPLE OF FAMILY REUNIFICATION.

THE SUBCOMMITTEE INCREASED THE CEILING ON FAMILY REUNIFICATION IMMIGRANTS TO 375,000. WE MODIFIED THE FORMULA FOR COMPUTING PER-COUNTRY CEILINGS TO INSURE THAT NO PER-COUNTRY CEILING WOULD FALL BELOW 10,000. THE SUBCOMMITTEE EXPANDED THE PROVISION GIVING IMMIGRANT STATUS TO CERTAIN RELATIVES ACCOMPANYING OR FOLLOWING TO JOIN A PRINCIPAL SECOND-PREFERENCE IMMIGRANT. WE RESTORED UNMARRIED BROTHERS AND SISTERS OF CITIZENS AS PREFERENCE IMMIGRANTS. IN ADDITION, THE SUBCOMMITTEE ELIMINATED THE SPECIFIC CUT-OFF DATE IN THE PROVISION GRANDFATHERING IN CERTAIN FIFTH PREFERENCE IMMIGRANTS -- AND SPECIFIED INSTEAD THAT MARRIED BROTHERS AND SISTERS WOULD REMAIN IN THE PIPELINE SO LONG AS THEY HAD PETITIONS FILED ON THEIR BEHALF AS OF THE DATE OF THE ENACTMENT OF THIS LEGISLATION.

SERIOUS CONSIDERATION ALSO SHOULD BE GIVEN TO ALLOCATING 50,000 NUMBERS PER YEAR FOR EACH OF FIVE YEARS TO CLEAR BACKLOGS. THE UNITED STATES, IN MY JUDGMENT, HAS AN OBLIGATION TO AMERICAN CITIZENS WHO HAVE ACQUIRED PRIORITY DATES FOR THEIR RELATIVES IN ACCORDANCE WITH EXISTING LAW. I BELIEVE WE MUST TAKE APPROPRIATE ACCOUNT OF PENDING PETITIONS -- BY ALLOCATING ADEQUATE NUMBERS -- WHEN WE SHIFT TO A NEW FORMULA FOR ADMITTING RELATIVES TO THE UNITED STATES.

THE MODEST ADDITIONAL NUMBERS ALLOCATED FOR BACKLOG CLEARANCE SHOULD BE VIEWED IN THE CONTEXT OF A NEW LEGAL IMMIGRATION FORMULA THAT ACCOMPLISHES, IN THE LONG TERM, MUCH MORE MAJOR REDUCTIONS. FIFTY THOUSAND NUMBERS PER YEAR FOR FIVE YEARS, MOREOVER, IS

ONLY HALF THE SELECT COMMISSION'S RECOMMENDED FIGURE OF 100,000 PER YEAR FOR FIVE YEARS FOR BACKLOG CLEARANCE.

S. 529, FINALLY, RECOGNIZES THAT SUBSTANTIAL NUMBERS OF ILLEGAL ALIENS ARE HERE TO STAY AND RESPONDS REALISTICALLY AND HUMANELY TO THEIR PLIGHT. AT THE SAME TIME THAT WE ACT WITH FIRMNESS TO DETER FUTURE ILLEGAL ENTRY, WE MUST DISPLAY COMPASSION IN OUR TREATMENT OF THOSE ALIENS WHO HAVE BECOME A PART OF OUR SOCIETY. THE CONFERRAL OF A LEGAL STATUS ON UNDOCUMENTED ALIENS WITH YEARS OF U.S. RESIDENCE WILL PERMIT THIS POPULATION TO COME OUT OF THE SHADOWS AND CONTRIBUTE MORE TO OUR COUNTRY.

THE SELECT COMMISSION, BY A 16-0 VOTE, FAVORED "A LEGALIZATION PROGRAM AS PART OF ITS ENFORCEMENT PACKAGE." PRECEDENTS IN U.S. LAW FOR LEGALIZING THE STATUS OF UNDOCUMENTED ALIENS CAN BE FOUND IN THE REGISTRY DATE -- WHICH SERVES AS A STATUTE OF LIMITATIONS ON ILLEGAL ENTRY -- AND THE DISCRETIONARY REMEDY OF SUSPENSION OF DEPORTATION.

S. 529, IN MY OPINION, SETS APPROPRIATE CUT-OFF DATES FOR ELIGIBILITY FOR LEGALIZATION. PERSONS WHO ENTERED THE UNITED STATES PRIOR TO JANUARY 1, 1977 MAY QUALIFY FOR PERMANENT RESIDENT STATUS, AND PERSONS WHO ENTERED PRIOR TO JANUARY 1, 1980 MAY QUALIFY FOR TEMPORARY RESIDENT STATUS, A TRANSITION STATUS LEADING TO PERMANENT RESIDENCE AFTER THREE YEARS.

THE APPROACH OF S. 529 REPRESENTS AN APPROPRIATE COMPROMISE BETWEEN THE VIEWS OF THOSE WHO WOULD ELIMINATE THE LEGALIZATION PROVISIONS ENTIRELY OR ONLY ADVANCE THE REGISTRY DATE TO 1973 -- AND THOSE WHO WOULD PROVIDE LAWFUL PERMANENT RESIDENT STATUS TO PERSONS WHO ENTERED PRIOR TO JANUARY 1, 1982. A FAILURE TO PROVIDE A SUBSTANTIAL LEGALIZATION IGNORES THE EQUITIES OF PERSONS WHO HAVE LIVED IN THE UNITED STATES FOR A NUMBER OF YEARS, PERPETUATES THE EXISTENCE OF A LARGE UNDERCLASS OF ILLEGAL ALIENS, AND CONTINUES TO SUBJECT CITIZENS AND LAWFUL PERMANENT RESIDENT ALIENS TO ENORMOUS SOCIAL COSTS.

I LOOK FORWARD TO FOLLOWING YOUR HEARINGS ON THIS CRITICALLY IMPORTANT BILL. THE CHAIRMAN OF THIS SUBCOMMITTEE DESERVES A

GREAT DEAL OF CREDIT FOR HIS OUTSTANDING LEADERSHIP IN CRAFTING THIS LEGISLATION AND SHEPARDING IT THROUGH THE SENATE LAST YEAR. I AM CONFIDENT THAT THIS YEAR WE CAN BRING AN IMPORTANT LAW REFORM EFFORT TO FRUITION.

Senator SIMPSON. Earlier when I mentioned two new members on the subcommittee, it was an unintentional oversight on my part to leave out Chuck Grassley who has followed this issue more closely than any other member of the subcommittee for such a thorough and long-lasting time and the member who has been deeply involved. He came to the issue new, but I believe he attended every single hearing we had. I am deeply appreciative of that.

We will now recess for our lunch break and resume at 1:30 with our panel of Philip Wood, Ben Brown, Robert Thompson, and Sam Bernsen, and then we will go on with our other witnesses.

[Whereupon, at 11:40 a.m., the subcommittee recessed, to reconvene at 1:30 p.m. on the same date.]

AFTERNOON SESSION

Senator SIMPSON. The hearing will come to order.

It is good to have the four of you here to share again your views. I do not always agree with them, but I respect them.

Philip Wood we have, a member of Alliance for Immigration Reform, with Ben Brown, the executive director of AIR; Bob Thompson, chairman of the board, U.S. Chamber of Commerce. It is good to have you and we congratulate you on your new position which is a little different than the last time you were here. Congratulations. And Sam Bernsen, an attorney with the American Council on International Personnel, who has certainly observed this arena from various vantage points for many years.

So we do have a time limitation. I hate to use that thing. If you would just limit your testimony, we will have time for questions. Why do we not just proceed in the manner of listing there.

STATEMENTS OF PHILIP WOOD, MEMBER, ALLIANCE FOR IMMIGRATION REFORM, INC. [AIR], ACCOMPANIED BY BEN BROWN, EXECUTIVE DIRECTOR OF AIR; ROBERT THOMPSON, CHAIRMAN OF THE BOARD, U.S. CHAMBER OF COMMERCE; AND SAM BERNSEN, AMERICAN COUNCIL ON INTERNATIONAL PERSONNEL

Mr. WOOD. Good afternoon. I am Phil Wood. I am responsible for the immigration and international relocation functions for Digital Equipment Corp.

I am here today to speak on behalf of Alliance for Immigration Reform. With me is Ben Brown, president of CGA, Inc., and executive director of the alliance.

The alliance represents some of our Nation's largest international high technology companies.

We welcome the opportunity this afternoon to present testimony to you and the committee. Let me say at the outset that the alliance supports the timely and important work of your subcommittee to bring illegal immigration under control, to place a reasonable limit on the annual flow of immigrants into the United States and to establish workable sanctions on the hiring of illegal immigrants.

We support, with only limited qualifications, the specific provisions in the pending bill to achieve these goals.

As you know, the alliance worked tirelessly last year to rally business support for immigration reform. On the touchy issue of sanctions, we repeatedly make the point that the prospect of jobs is the magnet that draws illegal immigrants. Business controls the magnet, not government. If the magnet is to be shut off, then business must do it. Government can and should set the policy. Business then can and should aid in its implementation. It is right for government and business to work together to make the laws work. Those who refuse to honor the law should face the penalty or sanctions for breaking them.

Two obvious facts emerge: First, only those who have an active interest in breaking the law can be opposed to the means to assure its effective enforcement. And, second, those who continue to oppose penalties or sanctions have yet to propose equal workable alternatives.

There is, of course, the very real and legitimate concern that the law, in setting up penalties or sanctions, may invite administrative overkill or excesses. The alliance has submitted several amendments that, based on the practical experience of our members, would reduce the risks of administrative overkill.

We do want to touch briefly on several other areas of utmost concern. First is the requirement in the pending bill that all foreign students, upon completion of studies in the United States, leave the United States for a period of 2 years before they become eligible for reentry. We understand the intent. We are largely sympathetic to it. Certainly, it is poor public policy for the United States to deprive other nations of their needed technical workers. Certainly we must do all we can to encourage more young students to develop the high technical skills in professions needed to keep American industry competitive in world markets and in our own domestic markets.

American business has made massive investments toward that end, and will continue to do so.

There are a number of reasons why American industry must not be denied access to certain foreign students with skills in critical demand or in short supply in the United States. We, in conjunction with the American Electronics Association, would like to explore these reasons in a full briefing at a later date with a full set of data.

We pressed our case last year and the end result is reflected in the limited waiver in the current bill. We are suggesting, however, that there is no need for an arbitrary cap or ceiling. We think that the certification process will keep the numbers at appropriate levels. We also are suggesting that the current bill language limiting the waiver to those holding doctorate degrees only would be a disastrous flaw, if not corrected. That may be a simple drafting error.

Our second area of concern is the proposed new preference system. In the main we think you are headed in the right direction. The difficulty arises with your new skilled worker preference. The effect is to lump the urgently needed high technology people, as well as various managers or members of the professions with other skilled workers, such as stone masons and governesses. With due respect to the latter skills, we think the former more directly benefit our Nation's economy in helping to create more industries and jobs and favorable export balances and should, therefore, take precedence. We are proposing an amendment toward that end.

A third area of concern bears on the intercompany transfers of foreign nationals. We have made a proposal to permit selected prequalified firms to handle their own processing under control of the Immigration and Naturalization Service.

The idea is to relieve the INS of an unnecessary administrative burden and to provide more timely visa availability. If American business is to remain competitive on the world scene and here at home, we must be able rapidly to assemble product development teams and to capitalize on rapidly changing technologies. We need to be able to draw on our worldwide resources. Timeliness is of the essence.

The alliance is in full agreement with the Business Roundtable, the National Association of Manufacturers and the American Council on International Personnel, the National Foreign Trade Council, the American Electronics Association, and the Association of American Universities on recommended qualifications to the pending immigration reform bill which we think will enhance the fine work of your subcommittee and its dedicated staff. I hope our collective concerns and recommendations will be taken into account and that we can all work together with this kind of teamwork that will lead to need immigration reform this year.

We thank you for your interest and we will welcome any questions.

Senator SIMPSON. Thank you very much.

And now, Bob, if you would care to share with us your thoughts.

STATEMENT OF ROBERT THOMPSON

Mr. THOMPSON. I am Robert T. Thompson, chairman of the board of directors of the U.S. Chamber of Commerce. I am also senior partner in the law firm of Thompson, Mann & Hutson of Greenville, S.C., Washington, Atlanta, and New York.

I am especially glad to be here today in my capacity as chairman of the board of the U.S. Chamber, and hope that it will emphasize to the committee the importance with which we view the questions posed by the proposed legislation.

I am also pleased to appear before you again, Senator Simpson, and the other members of the subcommittee to express the chamber's views on the subject of employer sanctions in the context of immigration reform. I testified before you on this same subject last April, and the chamber submitted a lengthy statement on employer sanctions to the subcommittee in September 1981. I would express that our continuing desire to be heard on this issue is indicative of the importance which we attach to it.

In the interest of time, I will summarize my testimony and respectfully ask that the prepared text be made a part of the record.

Senator SIMPSON. Without objection, it will be.

Mr. THOMPSON. I also want to commend the 97th Congress, and particularly Senator Simpson and Representative Mazzoli for their dedicated efforts last year in attempting to enact meaningful immigration reform. Although we disagreed in substance on the proposed employer sanctions requirement, we never questioned the good faith of the sponsors in their sincere efforts to come to grips with the many aspects of this troubling national problem.

Although we continue to strongly oppose the employer sanctions provision proposed in S. 529, which is identical to the provision passed by the Senate last year in S. 2222, because it would shift the burden of enforcing the Nation's immigration laws from the Federal Government to the private sector, we are nevertheless open-minded about finding a solution to this vexing problem. As we stated in our previous testimony, the chamber does not condone the hiring of illegal aliens. Neither do we in any way associate ourselves with those employers who normally or intentionally hire illegal aliens for purposes of exploiting them or evading the labor and employment laws. There is ample evidence to suggest that employer sanctions in any form, however, will never be an effective deterrent to illegal immigration. Nevertheless, we believe that if Congress is committed to enacting some form of employer sanctions, as it appears to be, a system can be devised, based on targeted enforcement against intentional violators, that minimizes the burden on the vast majority of good faith employers who want to do their part in helping to solve the illegal alien problem.

You have already heard in detail why we believe the present employer sanctions proposal would in practice be ineffective, unworkable, unreasonably burdensome to small business, and potentially very expensive. Therefore, I will not restate those arguments today and instead refer you to our previous statements.

In addition, my prepared statement develops a few of these arguments as other reasons why section 101 of S. 529 should not be adopted.

If, as we observed earlier, Congress feels compelled to enact some system of employer sanctions, the following suggestions should be considered as the basis for a more equitable proposal. We will be glad to follow this up with discussion or more details of this proposal.

First, Congress should devise a system that targets enforcement against the employer who knowingly and intentionally employs illegal aliens.

Second, such a system should be devised to substantially minimize, or even eliminate, the undue burden placed on the small employer by the present employer sanctions requirement.

I realize there is an attempt at this by the exclusion of employers with less than five people.

Third, such a system should place the primary enforcement burden exactly where it should be, and that is with the Federal Government.

Such a system would establish in law the goal which the proponents of employer sanctions are so anxious to achieve, and that is a statutory violation for the knowing employment of illegal aliens, which would encourage voluntary compliance.

Such a system would also recognize the limited resources available to the Government for enforcement purposes and would insure that these resources will be used in the most efficient and effective manner.

While we do not offer specific language for such a proposal, we commend the attention of the subcommittee to an amendment offered by Senator Tower during last year's floor debate on S. 2222.

We believe the essential elements of the Tower amendment would form the basis of a less onerous employer sanctions requirement, as I have just outlined. Further, we do not agree with Senator Simpson that an employer sanctions provision fashioned on these elements would gut enforcement. Rather, it would focus enforcement on those who would purposely flaunt the law.

In conclusion, the U.S. Chamber will continue to oppose the employer sanctions as proposed in S. 529. Nevertheless, we believe that if Congress, in its wisdom, concludes that some system of employer sanctions must be enacted, then the recommendations we have proposed would much more effectively accomplish the goals which Congress seeks.

Thank you.

[The prepared statement of Robert T. Thompson follows:]

PREPARED STATEMENT OF ROBERT T. THOMPSON

I am Robert T. Thompson, Chairman of the Board of the U S. Chamber of Commerce. I am also Senior Partner in the law firm of Thompson, Mann and Hutson of Greenville, South Carolina, Washington, Atlanta, and New York.

I am pleased to appear again before you, Senator Simpson, and the other members of the subcommittee to express the Chamber's views on the subject of employer sanctions in the context of immigration reform. I testified before you on this same subject last April, and the Chamber submitted a lengthy statement on employer sanctions to the Subcommittee in September, 1981. I would stress that our continuing desire to be heard on this issue is indicative of the importance which we attach to it.

I also want to commend the 97th Congress -- and particularly Senator Simpson and Representative Mazzoli -- for their dedicated efforts last year in attempting to enact meaningful immigration reform. Although we disagreed in substance on the proposed employer sanctions requirement, we never questioned the good faith of the sponsors in their sincere efforts to come to grips with the many aspects of this troubling national problem.

Although we continue to strongly oppose the employer sanctions provision proposed in S. 529 -- which is identical to the provision passed by the Senate last year in S. 2222 -- because it would shift the burden of enforcing the nation's immigration laws from the Federal government to the private sector, we are nevertheless openminded about finding a solution to this vexing problem. As we stated in our previous testimony, the Chamber does not condone the hiring of illegal aliens. Neither do we in any way associate ourselves with those employers who knowingly or intentionally hire illegal aliens for purposes of exploiting them or evading the labor and employment laws.

There is ample evidence to suggest that employer sanctions -- in any form -- will never be an effective deterrent to illegal immigration.[1] Nevertheless, we believe that if Congress is committed to enacting some form of employer sanctions (as it appears to be), a system can be devised, based on targeted enforcement against intentional violators, that minimizes the burden on the vast majority of good faith employers who want to do their part in helping to solve the illegal alien problem.

BACKGROUND

The U.S. Chamber has a long-standing policy on employer sanctions, one that has been extensively reviewed and reaffirmed by its Board of Directors, which states in essence that we will oppose any government requirements that place an undue burden upon employers. That includes any legislation that places employers in the role of a governmental enforcement agency.

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[1] See GAO Report: "Information on the Enforcement of Laws Regarding Employment of Aliens in Selected Countries," August 31, 1982: GAO/GGD-82-86.

When that policy was reviewed with respect to the employer sanctions requirement proposed in S. 2222 (now S. 529), the Chamber's Board unanimously voted to interpret the policy to oppose the employer sanctions provision, section 101.

Let me stress here that the Chamber has taken a position only on the subject of employer sanctions as proposed in S. 529. We do not have a position on the other major provisions within S. 529 designed to achieve immigration reform, although we strongly endorse the effort within the Administration and Congress to address those issues.

At the same time, we continue our own efforts to develop recommendations that would provide solutions to the illegal alien problem. As Chairman Simpson knows, our National Chamber Foundation is currently conducting a study of the entire immigration subject. The Foundation is actively seeking the views of all interested parties, including those who wholeheartedly endorse employer sanctions as a primary means to control illegal immigration. The results of the Foundation's immigration project, when finalized, should form the basis of broader Chamber recommendations to aid in solving the problem of illegal immigration.

THE PRESENT EMPLOYER SANCTIONS PROPOSAL: WELL INTENTIONED BUT MISDIRECTED

You have already heard in detail why we believe the present employer sanctions proposal would in practice be ineffective, unworkable, unreasonably burdensome to small business, and potentially very expensive. Therefore, I will not restate those arguments today and instead refer you to our previous statements.

I would, however, like to further develop a few of the arguments we have already raised as additional reasons why section 101 of S. 529 should not be enacted.

Particularly Burdensome to Small Business

We are fully aware of the language within section 101 designed to minimize the compliance burden on employers. The first 6 month "notice" provision, the second 6 month "warning" provision, the one year "public education" provision, and the eventual development of some, as-of-now unknown, form of secure identification are all good faith attempts to assist employers in meeting their compliance obligation.

To this end, the section 101 burden on large employers, who have the professional staff expertise to comply with the new requirements under the bill, is costly but probably manageable.

Nevertheless, it is wrong to assume that small businesses, the vast majority of whom have not and would never intentionally hire an illegal alien, will not be burdened by the imposition of yet another government regulatory scheme.

For example, section 101 does require every U.S. employer to verify the employment status of any new hire. Employers with 4 or more employees must keep a form on file, for a minimum of 5 years, which states that the employer has followed the verification procedure. Failure to keep the required form on file, even if the employer hired only U.S. citizens, subjects that employer to a potential fine of $500 per person.[2/]

In a world in which a small business person had no other government regulations to worry about, the section 101 requirement may not be excessively burdensome. That is obviously not the case, however.[3/] We can envision, as was the case with the passage of other well-intentioned but burdensome regulatory programs such as OSHA, that it will not be long before the "horror" stories of paperwork burdens and regulatory abuses start coming from our members.

It is interesting to observe that the primary reason offered by the proponents of the present employer sanctions provision in requiring mandatory recordkeeping is to prevent national origin discrimination against "Foreign looking or sounding" individuals. This concern is certainly both well intentioned and a laudatory objective we all share.

Nevertheless, we believe that this rationale is flawed.

For example, by requiring that verification forms be kept for hires only, what is to prevent discrimination, if it is to occur, from taking place during the applicant process? For example, if Mr. X and Mr. Y both apply for a job, and Mr. X looks foreign to the employer, Mr. Y may get the job despite Mr. X's better qualifications. If the employer keeps the proper verification form on Mr. Y, he has complied with the law even though the law has not prevented discrimination against Mr. X. To remedy this potential loophole, is Congress ready to require employers to maintain employment verification forms on every person who applies for a job? We note that the House soundly defeated, during the debate on its bill, an amendment that would have required just that.

More importantly, the U.S. Congress has comprehensively addressed the problem of employment discrimination and has enacted various penalties and remedies to be applied where discrimination occurs. Title VII of the 1964 Civil Rights Act, Executive Order 11246, and numerous State and local

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[2/] During House debate on its bill last year, an amendment was agreed to which raised the recordkeeping penalty to $1,000 and $1,500 respectively for a second and third or more time violation.

[3/] See, e.g., "Complying with Government Requirements: The Costs To Small and Larger Businesses" Battelle Human Affairs Research Center, for U.S. Small Business Administration, BHARC-320/81/022, September 1981.

government Fair Employment practice laws all provide ample authority to root out employment discrimination where it exists, including national origin discrimination which may occur against U.S. citizens because of the requirements of this bill.

Union Hiring Halls Exempt From Recordkeeping Requirement

Much has been made about the proposition that the present employer sanctions requirement applies fairly to all parties covered by the bill, or anyone who hires or for consideration recruits or refers for employment in the United States.

Therefore, we find it interesting to note that the union hiring hall, a means used commonly in the construction and other industries by unionized employers to hire workers, is not covered by subsection (b) of section 101, the mandatory recordkeeping provision.

We observe this inequity not to suggest extension of mandatory recordkeeping coverage to the union hiring hall -- a move that would certainly be justified on grounds of fairness -- but to further illustrate the bill's particular burdens on the small business person.

Willful Violators Will Evade Enforcement

It was well established during previous hearings that the various forms of identification which employers would be required to examine during the first 3 years after enactment in order to verify employment are easily forged and readily available to illegal aliens. Further, the bill provides an affirmative defense to an employer who has complied with the mandatory verification procedure, as evidenced by the retained verification form, in an action alleging the hiring of an undocumented alien. While we firmly believe that the affirmative defense is necessary to protect from potential government harassment those employers complying in good faith, we also believe that the defense provides a means, coupled with the easy availability of forged documents, for intentional violators to evade prosecution under the law. As long as the forged document "reasonably appears on its face to be genuine," the employer has met its compliance burden, even though it may have in fact known that the person or persons hired were illegals.[4/]

Unfortunately, and as a practical matter, the well intentioned small employer is the more likely subject for prosecution and/or penalty under section 101 as it now stands. This person may unknowingly hire an illegal alien, but, because of failure to maintain the proper records, is practically defenseless in an enforcement action. In fact, the small employer can be fined even if only U.S. citizens are hired. He or she also provides a

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[4/] It is impossible to comment on the effect of a "secure system" of identification upon this process until we know what it is going to be.

tempting target to the government inspector whose performance is judged on the number of violations cited and penalties assessed. Certainly the proponents of section 101 cannot intend this result.

DEVISE A SYSTEM THAT TARGETS THE INTENTIONAL VIOLATOR

If, as we observed earlier, Congress feels compelled to enact some system of employer sanctions, the following suggestions should be considered as the basis for a more equitable proposal.

First, Congress should devise a system that targets enforcement against the employer who knowingly and intentionally employs illegal aliens.

Second, such a system should be devised to substantially minimize, or even eliminate, the undue burden placed on the small employer by the present employer sanctions requirement.

Third, such a system should place the primary enforcement burden exactly where it should be -- with the federal government.

Such a system would establish in law the goal which the proponents of employer sanctions are so anxious to achieve; i.e., a statutory violation for the knowing employment of illegal aliens. [5]

Such a system would also recognize the limited resources available to the government for enforcement purposes and would ensure that those resources will be used in the most efficient and effective manner.

While we do not offer specific language for such a proposal, we commend the attention of the subcommittee to an amendment offerred by Senator Tower -- and subsequently defeated by the Senate -- during last year's floor debate on S. 2222.

We believe the essential elements of the Tower amendment would form the basis of a less onerous employer sanctions requirement, as I have just outlined. Further, we do not agree with Senator Simpson that an employer sanctions provision fashioned on these elements would gut enforcement. Rather, it would focus enforcement on those who would purposely flaunt the law.

The following elements are fundamental to a system that would meet the criteria I have outlined:

- Target enforcement against willful violators. This higher standard of proof, although more difficult for the government to establish, provides necessary protection to the good faith employer who may unknowingly hire an undocumented worker.

- Eliminate the mandatory verification procedure and substitute a voluntary procedure under which a complying employer would be provided with an affirmative defense against a charge of willfully hiring an undocumented worker.

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[5] INS Commissioner Alan Nelson testified: "The Administration believes that many employers presently hire illegal aliens because they are aware that there is no law that makes this practice illegal. With the passage of an employer sanctions law we are confident that most employers -- as generally law abiding citizens -- will uphold the law." House Judiciary Subcommittee Hearings on Immigration Reform, October 21, 1981, p. 242.

- Provide tougher penalties against those who willfully violate. Because the standard of proof is higher, this would send a message to those who do willfully violate the law that noncompliance will be strictly punished.

- Locate the enforcement function solely within the Department of Justice, the agency best qualified to fairly and efficiently enforce this law.

- Create an Interagency Task Force, including the Attorney General, the Secretary of Labor, the Secretary of Commerce, the Chairman of the Equal Employment Opportunity Commission, and the Chairman of the U.S. Civil Rights Commission. The Task Force would be charged with coordinating, developing, and recommending policies and practices designed to maximize results, while promoting efficiency and compliance, and reducing possibilities of discrimination in carrying out the sanctions provision.

Lessons From the GAO Report on Employer Sanctions

In July of 1981, Chairman Simpson requested the U.S. General Accounting Office (GAO) to identify countries with laws that currently prohibit employers from hiring illegal aliens and to point out any problems encountered in enforcing their laws.

The GAO issued its Report, "Information on the Enforcement of Laws Regarding Employment of Aliens in Selected Countries" on August 31, 1982. The Report found that within the 19 countries examined the laws were not an effective deterrent to employment of illegal aliens for two primary reasons: (1) employers were able to avoid compliance and, where apprehended, the penalties were too mild to deter noncompliance; and (2) the laws were not effectively enforced.

We are deeply concerned by the disturbing conclusions in the GAO Report that employer sanctions laws in other nations -- several of which are more severe than those proposed in S. 529 -- have not been an effective deterrent to illegal immigration.

If these existing laws have not been effective in deterring illegal immigration, what are the implications for S. 529? Will Congress be back within a few years demanding greater penalties, more money, more inspectors, and more intrusions into the private workplace in order to prove that employer

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6/ GAO Report, supra, p. 4.

sanctions can work? For example, we note that France recently passed a new law which increases existing penalties on employers who hire illegal aliens:

> "[I]n addition to increasing the penalties that can be judicially applied, provides the Labor Ministry with an additional sanction it can take against employers -- confiscation of their tools and equipment."[6]

CONCLUSION

For all of these reasons, we continue to oppose the employer sanctions as proposed in S. 529. Nevertheless, we believe that if Congress, in its wisdom, concludes that some system of employer sanctions must be enacted, then the recommendations we have proposed would much more effectively accomplish the goals which Congress seeks.

We urge consideration of these recommendations in lieu of the present proposal, coupled with the recommendations we made in our earlier testimony:

- tightening procedures for obtaining and for using border crossing passes;
- tightening the procedures for obtaining and enforcing student and tourist visas;
- strengthening border enforcement;
- developing more and better cooperative programs between government and business to control illegal immigration.

Although we do not have legislative language to offer at this time, we would be pleased to work with members of this subcommittee in fashioning more equitable and effective methods of enforcing our immigration laws.

I appreciate the opportunity to testify today and would be happy to answer any questions.

Senator SIMPSON. Thank you very much.

Now, please, Sam.

STATEMENT OF SAM BERNSEN

Mr. BERNSEN. My name is Sam Bernsen. I appreciate this opportunity to appear before you as the Washington representative of the American Council on International Personnel, known as ACIP. Our organization is composed of major multinational and national corporations and institutions with a vital interest in the international movement of personnel.

Our board chairman, Austin Fragomen, appeared before you on three occasions during the 97th Congress to set forth the views of ACIP on immigration reform. We hope they have been helpful and we appreciate the opportunity to appear again. As part of our commitment to immigration reform, ACIP has endorsed the Simpson-Mazzoli proposals for employer sanctions and legalization.

Of major concern to ACIP members, is the proposal in the Senate bill for creation of a separate selection system with 75,000 visa numbers for independent immigrants. We strongly favor this proposal. It is a vast improvement over the present system.

Under the current system, visa requests of many business executives cannot be satisfied for years because the independent categories under the present law are allocated no more than 54,000 visas. In addition, the independent categories are so inadequately defined in the present law that even top level business executives of large multibillion dollar organizations are denied third preference classification.

Another concern of ACIP is the labor certification proposal. It permits the Secretary of Labor to act on labor certification requests without reference to the particular job opportunity and by use of national labor market data. It is universally agreed that streamlining the labor certification process is necessary. We do not believe, however, that this problem is resolved by dispensing with individual labor certification in favor of schedules of certified and noncertified occupations. In fact, we believe that exclusive reliance on schedules will aggravate the problem. There are simply too many specialized jobs in today's highly complex business world that are not readily susceptible to scheduling.

General schedules that fail to take into account specialized requirements would result in unfair denial of labor certifications for positions in which there is a clear shortage of qualified U.S. workers.

The 2-year foreign residency requirement that would be imposed on foreign students is another of our major concerns. Because of the broad sweep of this restriction, it fails to consider many legitimate situations for students with skills and training in short supply in the United States.

We should keep in mind that in the world of scholars, the United States today is the Alexandria of ancient times. Scholars flock here in great numbers and fill up seats in U.S. colleges and bring needed foreign exchange. We should not treat these scholars with suspicion and new restrictions. Unfortunately, there is an erroneous conception that foreign students use their admission to study in the United States as a foot in the door and then remain illegally. INS itself has rejected this perception by stating in the Federal Register of May 28, 1982, at page 23463, "There is little evidence that students violate their entry to a greater extent than other nonimmigrants."

In the final analysis, it must be remembered that only foreign students who have been qualified for immigration may remain. The way in which they qualify is by obtaining a labor certification that they have a skill in short supply and are not taking jobs from U.S. workers. As long as there is a labor certification requirement, there is no sound reason for not permitting students to immigrate if they meet this requirement. And this is particularly so as the proposed employer sanctions provisions would prohibit employers from hiring students not authorized to work.

We have also submitted for your consideration proposals to strengthen family reunification and facilitate the movement of international personnel. The latter proposal is particularly important at this time with the increase in joint ventures between United States and foreign companies, such as the recent example of General Motors and Toyota.

In conclusion, we repeat ACIP's endorsement of immigration reform, and the Simpson-Mazzoli proposal in particular. We hope the bill drafted by the committee in this session will draw upon the experience of last year and will include changes that into account the legitimate interests of the Nation's business community.

Thank you.

Senator SIMPSON. Thank you very much.

[The prepared statement of Sam Bernsen follows:]

PREPARED STATEMENT OF SAM BERNSEN

Mr. Chairman and Members of the Committee:

My name is Sam Bernsen, and I am pleased to appear before you in my capacity as Washington Representative of the American Council of International Personnel (ACIP). Our organization is comprised of major multinational and national corporations and institutions with a vital interest in facilitating the movement of international personnel across national borders. Austin T. Fragomen, Jr., Chairman of the Board of ACIP, has appeared before this committee on three previous occasions during the 97th Congress to set out the views of ACIP with regard to immigration reform, as embodied in the Simpson-Mazzoli Bill. The opportunity to present ACIP's views to this committee has been a valued one to our members and, I hope, an enlightening one for the members of this committee. I express again today my appreciation for still another opportunity to elaborate on the views of our members with regard to immigration reform and can only hope that the work of this committee will result in enactment of a much-needed revision of the immigration laws in this congressional term.

ACIP has repeated on many occasions, both before this committee and in individual communications to members of Congress, its commitment to reform of the current immigration statute to create a fair, equitable and streamlined system providing for the admission to this country of qualified immigrants and nonimmigrants. As a part of our commitment to immmigration reform, ACIP has endorsed the proposals encapsulated in the Simpson-Mazzoli Bill last term for employer sanctions and amnesty for certain undocumented aliens. We continue to believe that the basic concept of sanctions is a good one that should not be objectionable to members of the business community. As long as the mechanics for enforcing the recordkeeping and reporting requirements included in the sanctions proposal do not put employers in potential conflict with other regulatory schemes, such as Equal Employment Opportunity regulations, the Simpson-Mazzoli proposal represents a feasible and fully acceptable basis for enacting employer sanctions.

Reform of the Immigration Selection System: Independent Immigrants

Of the immigration reform proposals that were debated before Congress last term, the one that most concerns ACIP members is the salutary proposal for creation of a separate immigration selection category for independent immigrants. That proposal, in its original form, allocated 100,000 immigrant visa numbers to independent immigration categories. Five categories, later synthesized to four, were established, with priority given to persons of exceptional ability in the arts, sciences and business, followed by preference to skilled workers and investors of a substantial amount of capital. One positive feature of this proposal was the alloction of numbers between the categories by means of a straight "fall-through" system: the highest priority would be allocated all of the visa numbers required by demand before any numbers would be available to the next priority. The one exception to this allocation method was a maximum of ten percent of the total visa numbers to the investor category. Because of the increased number of immigrant visas available to independent immigrants in the proposed system over the present system, we foresee that the needs of the business community will be adequately served by the total reform proposal.

Through the course of congressional consideration of the Simpson-Mazzoli Bill last term, several changes were wrought in the immigration selection system proposal. First, the number of visas allotted to independent immigrants was reduced to 75,000 from the original 100,000. Second, the requirements for classification in the investor category were eased somewhat with regard to the location of the investment enterprise in an area of high unemployment. Finally, upon consideration of the proposal in the House of Representatives, the Simpson-Mazzoli revision of the immigration selection system was eliminated.

ACIP spoke out strongly against the elimination of the Simpson-Mazzoli proposal, and we continue to do so. The positive aspects of the proposal -- an allotment of visas to independent immigrants separate from the allotment to family groups, a redefinition of the preference categories, and the "fall-through" allocation system -- are a vast improvement over the current system. At present, the immigration requests of many business executives languish for several years because they can only qualify under the lowest preference category. This problem arises because no more' than 57,000 visas are currently available to independent immigration categories, the categories are defined so that it is questionable whether even some high-level business executives can qualify in the higher of the two independent immigration preferences, and the backlog in the family preference categories because of ever-increasing demand leaves fewer and fewer visas for the lowest preferences.

While ACIP prefers that the original allotment of 100,000 independent immigrant visas be adopted and that the investor category as amended by this body last year be accepted, its primary concern is that the independent immigration system, and the larger immigration selection reform proposal, be preserved in the final legislation enacted by this Congress. It is the view of our members that this aspect of the Simpson-Mazzoli proposal must be incorporated in the reform bill if it is to have any beneficial impact on the business constituency.

Labor Certification Procedures

Another concern of our members is with the form that labor certification reform proposals took in the last Congress. The proposal incorporated in the Simpson-Mazzoli Bill and finally adopted by the Senate would permit the Secretary of Labor to fulfill the labor certification requirement without reference to the particular job opportunity and by use of national labor market information, rather than by reference to the labor market in the area of intended employment. While a streamlining of the labor certification process through greater reliance on labor market data is a desirable change from ACIP's viewpoint, we continue to believe that the Senate's version of this proposal would permit the Department of Labor to dispense with the individual labor certification procedure in favor of comprehensive schedules of certifiable or noncertifiable occupations.

This result would be highly undesirable from the standpoint of the business community. Many positions in today's highly complex business scene are not readily susceptible to such scheduling. The specific requirements of many positions in sophisticated multinational operations are so specialized that it would seem to be impossible for any set of schedules, no matter how comprehensive, to account for all positions. The result would undoubtedly be a degree of generalization with regard to business positions that might prevent the granting of labor certification for a position for which a demonstrable shortage, but no appropriate category on a Department of Labor schedule, exists.

In the House Judiciary Committee, an amendment to the language of the Senate bill was adopted which accounts in part for the concerns of ACIP. Under the House version, the Secretary of Labor would be permitted to use nationwide labor market information "with or without reference to the specific job for which certification is requested". This amendment was apparently an effort to at least implicitly authorize the use of an individual labor certification procedure in appropriate cases.

ACIP continues to believe that explicit statutory language is needed to prevent the Department of Labor from relying exclusively on predetermined schedules of certifiable occupations in issuing labor certifications. Last year, we put forward proposed language which would accomplish this result and we continue to advocate its inclusion in the labor certification section of an immigration reform bill. While permitting reference to national labor market data and reliance on scheduling, our proposal provides: "When the employer believes, however, that the specific job opportunity has special requirements not adequately accounted for in the national labor market information, he shall be accorded the opportunity to demonstrate that the conditions in this section are met, through such procedures as the Secretary of Labor shall specify." This language would require provision for an individual testing of the labor market in those cases in which the employer requests it. ACIP believes that the interests of the business community are best served by this proposal and continues to urge its adoption.

Two-year Foreign Residency Requirement for Students

One of the most controversial provisions of the Simpson-Mazzoli Bill in the last Congress was the proposal to subject all foreign students to the requirement that they return to their home countries for two years prior to having the opportunity to reenter the United States either as immigrants or temporary worker nonimmigrants. The controversy created by this provision was well-deserved, because its broad sweep failed to account for many legitimate situations involving foreign students with skills and training in short supply in this country. While the two-year foreign residency requirement for exchange visitors in the "J" nonimmigrant category bears some reasonable relationship to the purposes of the exchage program -- to impart to an alien skills in short supply in his home country -- no such purpose underlies the provision to permit foreign students to study in this country. Section 101(a)(15) (F) of the current Act does not require as a prerequisite to admission of a foreign student that he not be able to obtain the training and education in his home country. Regardless of the quality of such programs in his own, or other, countries, he may still choose to come to the United States to undertake his academic program. In addition, most foreign students do return to their home country upon completion of their education, even without a foreign residency requirement. Therefore, it would appear that this provision would serve little purpose in affecting what is already the prevailing situation with regard to the temporary stay of most students.

Despite the lack of any clear relationship between the admission of foreign students to this country and the proposed two-year foreign residency requirement, it is clear that the proposal has many proponents. A perception undoubtedly exists that foreign students use the opportunity to gain temporary admission to this country to study as a "foot in the door" to remain here permanently, taking high-paying jobs from U.S. workers. As a foundation for imposition of the two-year foreign residency requirement, however, this perception is highly questionable and the result is short-sighted indeed. Only those students whose skills are demonstrably in short supply in this country, as evidenced by the issuance of a labor certification, can hope to remain here permanently. The labor certification procedure is the safeguard, already incorporated into the statute, to prevent alien students from using their admission to a U.S. university as a wedge into the U.S. job market. If the skills developed by the alien through his education are truly in short supply and his employment would not displace a U.S. worker, then the position he is to fill would need to be filled from outside of the U.S. labor market, whether or not the student is permitted to fill it. The only difference is that the company with the need for the student's skills would have to engage in expensive recruitment campaigns abroad and fill the position with an alien whose educational credentials, because they are not necessarily from a U.S. university, might not be as outstanding as the student who studied here.

In short, it is the position of ACIP that the two-year foreign residency requirement does not serve a useful function and is based on a faulty assumption regarding the role played by foreign students in the U.S. labor market. While high unemployment is troubling to everyone, the answer to the problem is not to force vacancies on companies for positions that cannot be filled from the unemployed labor pool. ACIP believes that those considering immigration reform in this body have underestimated the shortages of certain types of persons on the U.S. economy. The House version of this proposal, with its timed phase-out of any waivers of the requirement, particularly reflects this lack of understanding. Shortages of high technology people goes to the very essence of educational objectives and societal values. ACIP is not aware of any data which would suggest that U.S. workers are moving to fill the shortage which demonstrably exists in many technical and scientific fields. While the increase in interest in these fields by U.S. workers and students would be desirable and might obviate the need for reliance on foreign students, a change in attitude and preference of this nature is not something that the business community or this Congress can control or direct. In a free society, we must live with the preferences of our citizenry, and unless this body can perceive a shift in the attitudes and preferences of American workers and students that is not readily apparent to ACIP there is no basis for imposing a time restriction on the granting of waivers to foreign students. When the time comes that U.S. students are clamoring to receive Ph.D. degrees in physics or electrical engineering, the U.S. business community will respond to the changed labor market conditions, or the Congress will undoubtedly require a response. Until that time comes, however, a time restriction of the type proposed in the House is not a useful provision.

If some form of a foreign residency requirement must be adopted as part of the overall immigration reform proposal, this committee must make certain that the legitimate needs of the U.S. economy are not ignored. The incorporation of adequate waiver provisions into any foreign residency proposal is essential to assure that the business community can fill its need for sophisticated talent and remain competitive with the highly efficient operations of foreign industry.

The waivers adopted by the House Judiciary Committee last year provide a good starting point for considering the needs of the business community. That body provided a waiver of the two-year foreign residency requirement for those alien students offered a research or technical position in the field which they received their degree by a U.S. employer, provided a labor certification is obtained. Waivers were also provided for certain aliens engaged in specified temporary training programs under Section 101(a)(15)(H)(iii) of the current statute, and for persons filling teaching positions in certain technical and scientific fields. ACIP recommends that two changes be made in the House proposal that are necessary to provide business with the maximum flexibility to meet its needs for skilled technical personnel. First, provision must be made for the waiver of the requirement for those aliens with technical and research capability whose skills are sought on a temporary basis by a U.S. employer. Provision for change of nonimmigrant status from the student category to the H-1 temporary worker category would provide the business community with access to desperately needed skills without requiring a commitment to permanent resident status for the alien. Without this provision, immigrant visas would be needlessly allotted to persons for whom a company's need is only short-term, such as those persons whose skills are required on a limited research project. In addition, a safeguard against abuse of this change of status provision is already built into the current statute, since Section 214 of the Act requires that the Attorney General approve the classification of any alien as a qualified temporary worker in the H-1 category. Since the alien's qualifications are clearly subject to rigorous scrutiny under this provision, a regular check can be made to assure that only those aliens who truly possess research and technical capabilities are the beneficiaries of the waiver.

Second, the waivers themselves should be broadened to cover students in any area for which a graduate level degree is required and a labor certification can be obtained. As long as the safeguard of labor certification is present, there is no logical or sound reason for not permitting students who meet labor certification requirements to remain in the United States. The U.S. economy is dramatically affected by such shortages whether they occur in such areas as international banking or marketing or in the technical and research fields for which waivers were provided in the House version of the bill last term. The ability of U.S. business to remain competitive in the international market place is the key consideration that ought to govern the committee's consideration of this delicate issue.

Other Proposals Affecting the Business Community

Several other provisions of the Simpson-Mazzoli reform measure presented to Congress last year are of interest to ACIP's membership. One of the provisions with regard to family reunification presents a very human problem which we believe this committee must address. As originally proposed, the Simpson-Mazzoli Bill would have eliminated immigration preference consideration for the unmarried adult sons and daughters of U.S. permanent residents. This provision would have caused particular hardship to those families coming to the United States as employees of multinational corporations who counted among the family unit children over 21 years of age who still depend for support on their parents. In today's sophisticated society it is not unusual for children, particularly those still in school, to be a part of the family unit well past the age of 21. While the Senate adopted this limitation on eligibility for permanent residence, the House Judiciary Committee amended this proposal to provide for permanent residence for those children of U.S. permanent residents up to the age of 26. ACIP believes that this proposal is beneficial and would eliminate needless hardship to the families of many company executives and employees, who might not accept U.S. assignments if they were unable to preserve their family unit.

Another provision of the bill passed by the Senate last year which could create unnecessary hardship is the strict bar to adjustment of status for those persons who have "failed to maintain continuously a legal status since entry in the United States." The House Judiciary Committee adopted an amendment to this provision which would bar adjustment for those persons "not in legal immigration status on the date of filing the application for adjustment of status." Thus, aliens who have failed to maintain legal status since their entry into the United States, but who have corrected such failure and regained proper status prior to the filing of an adjustment application would be eligible for adjustment. This provision accounts more fully for the not uncommon situation in which an alien fails to maintain valid status because of a technical violation of the law, or because of changing interpretations of the law. ACIP endorses the House Judiciary Committee's language as more realistic in view of the complex nature of the immigration statute. It accounts for the good faith effort of persons to comply with all provisions of the immigration statute, as evidenced by their regaining of valid status, while furthering the obvious policy goal of not rewarding those persons who have consciously failed to comply with the law.

Finally, I want to take this opportunity to continue to endorse a proposal which has not appeared in any version of the immigration reform proposals that have been considered by the Congress: the enactment of an intracompany transferee program similar in mechanics to the present exchange visitor program. Under ACIP's proposal, which Mr. Fragomen has presented to this committee on two previous occasions, multinational companies that regularly transfer a significant number of personnel to the United States would be authorized to issue their own approval notices, subject to the agreement of a U.S. consul to issue a nonimmigrant visa to the employee as a bona fide nonimmigrant. The INS would no longer need to approve petitions on behalf of the employee once it had certified that the company qualified for an intracompany transfer program. The company would thus be saved in every case from demonstrating that its corporate structure qualifies for consideration in the "L" nonimmigrant category. While this program could be instituted administratively, and in fact the INS has had such a program under active consideration, it has been almost a year since that consideration began. ACIP believes that congressional action on this proposal through its inclusion in the immigration reform package would insure its institution and finally bring about a desirable change that would save both the government and business from unnecessary paperwork and expense.

Conclusion

I wish to conclude by repeating ACIP's endorsement of immigration reform in general, and the Simpson-Mazzoli proposal in particular. While there is room for improvement in this proposal, it stands as an admirable basis for reforming our immigration laws in a manner that would satisfactorily serve the nation's business community. ACIP engaged in major efforts in the last Congress to assure the passage of this legislation, including communications with every member of the House urging its enactment. We will continue this year to seek the best possible immigration legislation. We fervently hope that the bill drafted by this committee will draw upon the experience of the last year and will include changes from the original proposal that take into account the legitimate interests of the nation's business community.

Senator SIMPSON. A few questions now for Philip Wood.

Your organization obviously represents a number of Fortune 500 companies and, certainly, the issue of employer sanctions is one that has caused a great deal of concern with those in corporate life. Why do you feel strongly that employer sanctions are very necessary to the control of illegal immigration and maintaining control over our borders?

Mr. WOOD. Senator, with due respect, I would like to ask Ben Brown to respond to that.

Senator SIMPSON. Yes, please.

Mr. BROWN. I think it has become clear to us that some sort of a handle has got to be gotten on the problem. It is not so much that we are absolutely dedicated to employer sanctions if there is another equally workable way. The fact is that in all of our studies and review of the situation we cannot find any proposal that seems to be equally as workable and enforceable.

We are, of course, concerned with paper work potentials and aggravation. I think this committee is alert to it and concerned about it, working with groups like AIR and others concerned with this field. We have developed a great deal of respect; we have been educated and feel that this is the only way to go.

Senator SIMPSON. Do you feel that they can be enforceable and that if they are enforceable, will they, as some critics say, increase employment discrimination against minorities?

Mr. BROWN. Well, we are, of course, aware of concern within certain communities about the possibility of discrimination. I think it is going to be a very difficult and touchy area, but it is an area that I think we can make work. It is going to take some experience and perhaps some oversight from this committee over a period of time. I do not think it is going to be easy is what I am saying, but, certainly, it can be made to work, and made to work equitably.

Senator SIMPSON. That is something that I concur with. It is not going to be just something that we put on the books and say it is there. We saw that it was done, is that not great? It will be far removed from that. It will take careful oversight. It will take careful reporting, and it will take careful review to discern several things:

One, is there discrimination through employer sanctions?

Two, is the burden so oppressive upon business that it is an impossible one to continue to ask?

Those are things that we hopefully have dealt with with regard to report language and actual reporting requirements in the legislation, the periods in which Government agencies are to respond on that. So I often relate to people that if it were passed in some form that would, you know, still allow sponsors to be assured that it would have some teeth to it. I have no idea what it might do to solve America's problems, but I can tell you I would not put a great deal of credence in it as being the solution to America's problems, but it would be a start of something that we could build on, something appropriate to do what every nation should do.

So I might ask, I know I have read your testimony with great interest, Bob, because I know you and I have differed and I certainly have no desire to have you here today to hammer and tong it. I do not want to even be involved in that. And you and I have had some good business about it since, personal visits.

Mr. THOMPSON. You are not going soft, are you?

Senator SIMPSON. No, I am really not. The juices are calm deeply in my body.

The GAO report, and there is an interesting issue. I was at a forum with the chamber a week ago and that comes up because that is one of the defenses to say, "Well, you know, OK, how about the GAO report"? And I say, "OK, I wish it had said something different. Let's look at it." And I think people tend to read the 5-page overview of the report and not the 70 pages of it because, in your comment on it too, you cited in some of the comments of the overview, but in Canada we find that it had not been an enforcement priority there. It is now becoming so. The enforcement people viewed their role as educators and judges never took the law seriously and they penalized lightly. We have often said, you know, in the Select Commission we are very sure that 11 States have employer sanctions and there has been 1 conviction I think in Michigan for $250. The issue is employer sanctions will never work as long as they are considered as a cost of doing business. As long as penalties are just of the area or the amount where it is just doing business and passing it on through, it will never work.

In West Germany, we found in looking at the GAO material that in Germany they have employers who lease workers. That is an interesting concept. The law did not apply to that and that has been addressed in a new law in the last weeks and months in the Republic of Germany. And, of course, they have tightened their procedures because of their guest worker program originally.

In France we find light sentences, light penalties because they do not view illegal employment as a serious offense.

In Switzerland they leave it to local control, a kind of home rule, if you will. Enforcement is a function of the community and then, as I say, we have tried it in the United States and it was not really terribly effective. But it has been interesting since the GAO report, maybe it is just the world seeing that parliaments and governments and legislatures of those countries which were reviewed there have all now suddenly galvanized themselves into new action.

Are you aware of that new material?

Mr. THOMPSON. I am aware of the GAO report. I am not aware that countries around the world have galvanized themselves into action.

Senator SIMPSON. That is occurring and perhaps we will ask for a followup on that. I think it will be the intent of sponsors to see where we are just in this very short interim time. But, in any event, employer sanctions are never going to be effective if they are simply considered as a cost of doing business.

Mr. THOMPSON. I agree with that. I do not disagree with you at all on that point. You might be interested to know that at the chamber we have asked our international committee to take a look at this whole subject. I am chairman of the labor relations committee and my previous appearances before you and conferences with you, I have been acting in that capacity. I am here today in a dual capacity. But we do have an international committee which is concerned with world trade and immigration problems. And we have, just within the last few days, asked them to take a look at this and see if they can help us find a way that would be more acceptable to the Congress as well as to our members to deal with this subject.

Senator **Simpson**. I think you were very responsive when you made allocation of resources to have papers presented to you. The paper that was addressed the evening was by Michael Titlebaum, who is one of the most thoughtful observers of the scene in this area, and I admire the chamber for their willingness there. I hope you might direct your international group to take a look particularly at the subheading of the Mexicans-American relationship not only in the area of immigration and trade, as you speak, but also water, water regulation along that 2,000 miles. I think whatever you find there we would appreciate your sharing with us.

Mr. **Thompson**. We certainly will.

I hope you will not take lightly the testimony I have given because we consider what we are saying today as being a different position than we have taken earlier, and that is, if you are going to have employer sanctions, and we would just as soon they go away, but that we are going to have sanctions, we find a way to target those sanctions so they do not cover everybody, every employer in the United States with more than three employees with this verification system. We think that is the most difficult part of this whole proposal because it just jumps up at us as a nightmare of paper work and bureaucracy, which I think you would agree we do not want to put on American business, especially small business. And small business does not cut off at three and four employees.

We feel, even though the Fortune 500, probably 100 percent represented in our membership, about 80 percent of our total membership consists of small businesses with less than, say, 50 or 100 people in them.

We feel that the real effects there will be on small business. It will be a real burden which they do not need. We do not think the vast majority of small business is involved in the employment of illegal aliens. Yet this verification system would apply to all of them. We would hope you could find a more limited way to target enforcement so that you really zero in on the bad actors and we will be glad to help you find them and bring them to some form of prosecution because we have no sympathy for them.

Senator **Simpson**. I can assure you that I hear the heralds of a new response there from the chamber and I appreciate that. And I am aware of the issue of the paperwork requirement, and I know in past times you have endorsed certain Government proposals and finally having them come back to haunt you. I understand that too.

I gather that the chamber might be more supportive or perhaps the word would be less opposed if there was a total elimination of the paper work requirements.

Mr. **Thompson**. We would consider that almost there.

Senator **Simpson**. OK, if that were the case, then how do we deal with the argument that comes to us, or comes to you with that position, that the elimination of paperwork requirement would then really increase discrimination, and then argue, as you indicate, the only way to avoid discrimination then would be require records be kept on all applicants and not just employees?

Mr. THOMPSON. I have considered that point. I do not think anybody can say whether this law or some version of this law, this proposed law, would tend to increase discrimination. We have laws on the books that prohibit discrimination in the categories that you are talking about.

I have a copy of the page from the Congressional Record of August 13, 1982, where you and Senator Kennedy agreed on an amendment to the bill, which would at least draw some further attention to the problem of discrimination, and we had no quarrel with that.

My feeling is this: You have enough, as we say down South, to say grace over this immigration problem without trying to solve the problems of discrimination as well. And I think we do have laws and we do have agencies which are perfectly capable of dealing with the problems of discrimination. It may be that I am wrong. It may be that this would invite more discrimination, and I think we will just have to deal with it at the time. We have no more sympathy with employers who violate the laws against discrimination on account of race or national origin or whatever than we do with people who knowingly employ illegal aliens. And we would certainly join with you in trying to prevent that type of law violation that is definitely against the public policy.

I think you have got a situation here where we are all about to achieve the same objective, and we all, I think, even share the same concerns about what is going to happen whenever we do whatever we do, but we certainly are willing, and make this offer now, to cooperate in any way we can to try to avoid creating more problems by whatever is agreed to, if we do agree to anything.

I would suggest to the committee that you do have requirements under the public contract rules, presidential orders, where at least Government contractors are required to keep records on this sort of thing, and you have got that already in place. It might be a good way to test your discrimination results, without enacting further requirements.

Senator SIMPSON. We will have some testimony on that in these hearings before we go to markup and we will develop that.

Mr. THOMPSON. You know most of the Fortune 500 companies are Government contractors, I think. Perhaps you could use them as a good test for the discrimination laws, if they are complied with, whatever law you put on the books, since they are so anxious to get this law on the books. They already are required to keep these kinds of records, and maybe you could just check their records. This is not, as I see it, as big a problem for them because they have got computers and thousands of people to keep records, whereas the small business people do not have that. You have got a readymade pilot project you could probably look to.

Senator SIMPSON. Well, we will keep an open ear and an open dialogue, I promise you that. Ironically, you recommend to us here in your remarks that an amendment, in a very important debate was defeated by a vote of 85 to 14 as being an impossible vehicle for resolving the situation. That makes it rather difficult because it probably had the least support of any amendment presented in the whole 16 or 17 rollcall votes.

Mr. THOMPSON. I recommended it to you because I notice you agreed to it.

Senator SIMPSON. I did? No.

Mr. THOMPSON. Page S. 10447 of the Congressional Record of August 13, 1982.

Senator SIMPSON. Not that amendment which was the so-called Tower amendment.

Mr. THOMPSON. I am sorry, this was the Kennedy suggestion.

Senator SIMPSON. Oh, yes.

Mr. THOMPSON. I understand the Tower amendment.

Senator SIMPSON. But you also suggest that that is a step we might take, something along those lines. And, as I say, that amendment was defeated by 85 to 14.

Mr. THOMPSON. I think that was attributed to you, and your persuasive abilities. It was your bill on the Senate floor.

Senator SIMPSON. I see.

Mr. THOMPSON. I take my hat off to you. I was very impressed with your vote on the final bill.

Senator SIMPSON. We will be talking. That is important.

Mr. THOMPSON. Yes.

Senator SIMPSON. Thank you very much.

Now, Mr. Bernsen, what are the benefits that you see for the country with increased independent immigrant category under the preference system? That was a very important part of the Select Commission's work because of the so-called seed category. I was enthralled by that and still am. When we get into numbers, we were talking about some good numbers there, 120,000, 125,000 at various times. What do you see there?

Mr. BERNSEN. Well, we see a clear opportunity for business executives to be able to come into the country and we prefer the largest feasible number. At this time professionals and other urgently needed workers have to wait years in order to be able to immigrate. With the increase in numbers and with a fall-through allocation system, we believe that the waiting period will decrease greatly so that these immigrants will be able to come to the United States on a timely basis when their services are needed by business organizations, not 3 or 4 years later.

Senator SIMPSON. I understand that you have been working with INS on a proposed intracompany transferee program. What success have you had there? Why do you feel it necessary that legislation to that effect might be included in the bill?

Mr. BERNSEN. Well, we had a very peculiar success with that proposal. Immigration and State Department both wholeheartedly agree that it is an excellent proposal. They received it and approved it almost a year ago but have not yet implemented it.

Under this proposed program, it will be impossible for multinational companies to be authorized in advance by INS to certify the eligibility of their executives, their managers and their specialists so that the companies would not have to submit individual petitions to bring these people in over and over again. It is a burden on the Immigration Service to handle these petitions over and over again, and, of course, it is a burden on business to constantly keep on submitting the same documents.

Senator **Simpson**. Yes, and I think we hear that clearly and I have spoken to some of the other groups since the passage of the bill in the Senate. We recognize it and, hopefully, we will be able to deal with it appropriately.

Let me ask you just a final question with regard to the individual labor certification, and that will certainly be a part of this. Could you elaborate why business needs might be more appropriately met with an individual labor certification as opposed to a certification based upon labor market information without reference to a particular job opportunity?

Mr. **Bernsen**. Senator Simpson, we favor both approaches. We do believe in schedules, but not in an exclusive scheduling, because the specialized types of positions today do not lend themselves to universal scheduling. There has got to be room for both schedules and for individual consideration where the type of job cannot be put on a schedule. That is what we are suggesting.

Senator **Simpson**. I think that what I am just referring to there is now under review by OMB and proposed regs apparently will be published for comment on that shortly.

That is the latest we have on that. I think it will be of interest to all of you. It is under review and those regs are coming close to publication for comment.

Mr. **Bernsen**. Thank you.

Senator **Simpson**. Thank you very much.

I appreciate your testimony and appreciate you taking the time to do this for us.

Thank you.

Next we have Henry Voss, president, California Farm Bureau Federation, American Farm Bureau; and Perry Ellsworth, executive vice president, National Council of Agricultural Employers.

May I have your attention, please?

I believe we will just go forward on this list here on the agenda. The Chair will hear comments from Mr. Voss. We appreciate it very much.

STATEMENTS OF HENRY J. VOSS, PRESIDENT, CALIFORNIA FARM BUREAU FEDERATION, AMERICAN FARM BUREAU FEDERATION, ACCOMPANIED BY CHUCK FIELDS; AND PERRY ELLSWORTH, EXECUTIVE VICE PRESIDENT, NATIONAL COUNCIL OF AGRICULTURAL EMPLOYERS

Mr. Voss. Thank you, Senator.

I would like to introduce Chuck Fields, of the American Farm Bureau staff, who is sitting next to me.

Senator **Simpson**. I should have done that. He has been a very important participant in the discussions over many months. We appreciate it.

Mr. Voss. I believe you have the full text handed to you and I am just going to summarize it if that is all right this afternoon, in the interest of time.

I appear here today as a producer of fruits and vegetables, but also as president of the California Farm Bureau, and as spokesman for the 3 million member families of the American Farm Bureau

Federation, for which I serve as a member of the executive committee.

We recognize, as a matter of basic policy, that the Federal Government must regulate and control who comes into this country and how many; that the control of immigration, both legal and illegal, has gotten out of hand, and that Congress must take steps to bring it under control, but not at the expense of creating a disaster in agriculture.

We estimate that some 300,000 undocumented workers are currently employed on our farms and ranches, representing about 15 percent of the hired farm work force, though only 7 percent of the total aliens employed in this country as a whole.

It is simply not true that most agricultural employers employ illegals because they are a source of cheap labor. They employ them because they are available; because they are highly productive because they have found over the years that so long as Americans have the benefits of various social protection programs, they are not willing to leave their places of residence and go to rural areas and take seasonal jobs.

Although this committee has made a good start in providing for a workable temporary foreign workers program in section 211, that is intended to provide for the special needs of agriculture, we have concluded, after careful consideration, that section 211 in this bill is not adequate and will not accomplish that goal.

It must be borne in mind that a great many agricultural employers have become dependent upon undocumented workers. The enactment of legislation before us creates great uncertainty for agriculture as a future source of seasonal labor that we must employ.

We remain opposed to employer sanctions as a matter principle. We recommend that section 101 be amended so as to reduce somewhat the regulatory burden and severity of sanctions upon employers; such as, removing the jail sentences, making the recruiters and referrers of workers responsible for documentation and recordkeeping. And by settling the documentation question once and for all, by requiring the issuance of a new tamper proof, counterfeit proof social security card.

We have made several specific suggestions that we think are needed to make section 211 a workable program, including the removal of the 8-month limitation, providing for a maximum of 50-day advance filing time for certification, and providing for a workable definition of the term "labor dispute," a problem that requires the attention of this committee to avoid the easy closing off of the program to employers with two or three people at a place of employment. We are attaching suggested language.

We ask that a new subsection, subsection (f) be added to section 211, to authorize the development of a 5-year transition program, during which time on a phased out basis, agricultural employers can continue hiring those who choose not to apply for or do not qualify for legalization. We are attaching suggested language.

We are convinced that the H-2 program, even if improved, as we have recommended, would not adequately meet the needs of agricultural employers in the highly seasonal labor intensive employment areas. Accordingly, we will support additional legislation either as part of this bill or as an addition to this bill to provide for a more flexible seasonal foreign worker program that is not employer or commodity specific, and that provides for less burdensome regulatory procedures.

Finally, we urge that the bill be amended to incorporate the provisions of Senate bill 458, introduced by Senator McClure requiring the INS to obtain a properly executed search warrant prior to entering a farm or other agricultural operation.

Thank you.

Senator SIMPSON. Thank you very much.

[The prepared statement of Henry J. Voss follows:]

PREPARED STATEMENT OF HENRY J. VOSS

The American Farm Bureau Federation is the nation's largest general farm organization, representing more than three million families in 48 states and Puerto Rico who are members of more than 2,800 county Farm Bureaus, and who have joined voluntarily and pay dues annually to finance the organization. We estimate that at least 85 percent of the farmers and ranchers in this country are members.

Farm Bureau positions on public issues are developed from the grass roots up through the ranks of the organization with approximately a third of the voting members participating in an extensive policy discussion and development process. Because of the nature and scope of that process, we feel confident that our adopted policies represent the majority thinking of farmers and ranchers in this country.

FARM BUREAU POLICY REVIEW

Last month the State Farm Bureau voting delegates who participated in the 64th annual meeting of the American Farm Bureau Federation, adopted an extensive statement on immigration policies, calling upon Congress to: (1) analyze and take action to reevaluate and reestablish new quotas on immigration; (2) require careful screening of those admitted to this country so as to reject criminals or other undesirables; (3) provide for better control over the flow of illegal aliens into the country; (4) deny the benefits of social programs to illegals; (5) improve procedures to keep better track of those admitted legally but do not leave on a timely basis; (6) provide better control over mass entry of refugees; (7) restrict the ability of illegal aliens to take advantage of our political system; and (8) establish less cumbersome and more prompt legal procedures for the deportation of those who have no right to be in this country.

The policy goes on to state that we are opposed to the requirement of any national identity card, taking the position that the only identification that should be required for employment is the Social Security card. We are opposed in principle to the imposition of criminal sanctions on employers who hire undocumented aliens; and we are opposed to blanket amnesty of illegal aliens already in this country; but recognize the need for a controlled or limited amnesty for those who have lived here over a period of years, have no criminal record, are capable of speaking and writing basic English and who meet other such minimum requirements. Such limited amnesty should be a part of an overall plan to greatly reduce illegal immigration in the future.

Furthermore, the Farm Bureau position is that if Congress changes the immigration law in such a way as to adversely affect the present farm labor pool, "it is imperative to provide workable temporary foreign worker programs for agriculture."

"These programs must give reasonable assurance that such workers can be recruited on a timely basis when neither employers nor the employment service can find U.S. workers who are willing, capable and available in the area of need."

"The programs must be sufficiently flexible to provide for the labor needs of agricultural employers that produce highly seasonal, labor intensive commodities."

"Such programs should also provide for employment of refugees and other undocumented workers already here who seek agricultural work."

Finally, Farm Bureau policy asks that laws governing the apprehension of illegal aliens "should be carried out uniformly and equally in all industries. Entry to farms and agricultural operations should be permitted only when immigration officials hold properly executed warrants which name individuals that are being sought..."

It is clear from this review of Farm Bureau policy that our members and leaders have given considerable thought to the immigration and naturalization policies of this country. We recognize that it is a prime responsibility of the federal government to control the borders of our country, and we share the concern of most Americans that changes are needed to restore and insure that control. It is as obvious to us as to others that illegal entries have gotten out of control. We believe that as a matter of basic policy, the federal government must regulate and control who comes into this country and how many. We have no doubt that hundreds of millions of people in other countries would like to emigrate to this country to share our liberties and the fruits of our capitalist economy; but there is a limit to our ability to accommodate them.

AGRICULTURE AND ALIEN WORKERS

A great many farmers and ranchers have for many years been closely associated with aliens coming to this country, either legally or illegally, to work and to enjoy our way of life. We have come to have a high regard for them. We find them highly motivated, eager to work, to save, and to be a productive force in our industry. Many come here at great personal sacrifice to escape abject poverty and tyranny in countries that have degenerated into socialism or military dictatorships.

Because of the ready availability of such persons and because Americans are not willing, able and available to take a great many of the seasonal jobs in agriculture, our conservative estimate is that some 300,000 undocumented workers are currently employed on our farms and ranches, representing about 15 percent of the hired farm workforce, though probably only 7 percent of the total of such workers employed in this country.

It is simply not true that most agricultural employers want to employ illegal aliens because it is a source of cheap labor. They employ them because they are available, because they are highly productive and because they have found over the years that so long as Americans have the benefit of various social protection programs they are not willing to leave their places of residence, go to rural areas and take seasonal jobs.

EFFORTS DURING 97th CONGRESS

During the past two years, we have attempted to work with this Committee, its staff, with the House Committee and its staff, with representatives of the Departments of Justice, Agriculture and Labor, and with other members of Congress in fashioning immigration reform legislation that would not create a disastrous situation for a major segment of American agriculture.

We opposed and continue to oppose the employer sanction provisions of the bill now before this Committee and placed major emphasis on Section 211, which seeks to provide for improved procedures to admit nonimmigrants to take seasonal jobs in agriculture, where it can be demonstrated that Americans are not willing, able and available to perform such work.

Although the Committee accepted a number of our recommendations for changes in the section originally proposed, with the goal of achieving a seasonal worker program that would have some reasonable chance of being workable, we concluded, after careful consideration, that the section adopted by the Committee and subsequently by the Senate is inadequate and will not accomplish that goal. In further consideration of the section recommended by the House Judiciary Committee and the radical amendments posed by the House Education and Labor Committee, we concluded that we had no choice but to mount an all-out grass roots campaign to defeat the bill in the House.

INDUSTRY-WIDE REVIEW

For the past several weeks, we have been meeting with representatives of a number of agricultural producer groups from the major areas of the country to analyze the legislation being proposed in both houses, and to develop proposals and strategy to achieve a workable foreign-guest worker or seasonal program for agriculture. We are more concerned than ever that the proposals now before this Committee, if they are not improved and supplemented, will result in a chaotic and disastrous situation in major segments of agriculture.

It needs to be borne in mind that a great many agricultural employers have become dependent upon undocumented workers. The enactment of the legislation before us creates great uncertainties for agriculture. We do not know, nor does anyone, exactly how many such workers are currently employed in agriculture, where they are employed, how many would apply for or would qualify for legalization, or how many who achieve legal status would choose to continue working on farms and ranches.

The very nature of agricultural production, particularly of the fruits, vegetables and other crops that require large numbers of seasonal field workers, is that the required labor must be available when nature dictates, not when some government official in Washington, D.C., or some regional office of the Department of Labor decides to allow access to the needed workers.

SPECIFIC RECOMMENDATIONS

With those and other considerations in mind, we want to make the following specific recommendations:

1. That Section 101 be amended to:

(a) remove the jail sentences;

(b) remove the penalties for failure to keep a record of worker identification and documentation, since a loss of presumption of good faith compliance is sufficient incentive to keep such records;

(c) that where workers are recruited and referred to employers by labor unions or by the Federal/State Employment Service, the burden of establishing eligibility to work, examining the documentation and keeping a record of documentation be the responsibility of the union or the Employment Service, not the employer. This would eliminate unnecessary duplication, relieve some of the excessive burden on employers, and place clear responsibility on the entity that recruits and refers the workers. We have heard of instances in the past, where employers were seeking certification by the Department of Labor to employ temporary foreign workers under the H-2 provision of the Act, in which the Employment Service referred undocumented workers to the employer to demonstrate availability of domestic workers; and

(d) that the uncertainty of documentation now provided in this section be eliminated by requiring that within three years the Social Security Administration be required to issue a new Social Security card to all who seek employment. The new card should be issued under strict documentation requirements and should be as near tamper-proof and as difficult to counterfeit as technically feasible. That should be the only worker identification that would have to be examined by an employer.

2. That Section 211 be amended to:

(a) Delete the 8-month limitation on the maximum aggregate period the H-2 workers could work in this country during any year. We believe it would be best to leave this to a regulatory decison of the Secretary of Labor.

(b) Amend the language to provide for a maximum advance period of filing for certification from the 80 days in the bill to 50 days, which would still give the Department of Labor 30 days to search for domestic workers who are able, willing and available to fill the jobs. The language should also provide that an employer be notified in writing within seven days of his date of filing for certification, if the application does not meet the standards for approval, stating the reasons for rejection, so as to permit the employer to resubmit a corrected application on a timely basis.

(c) A workable definition of "labor dispute" should be included. Under the present definition of the Department of Labor and the Immigration and Naturalization Service any two or more persons at jobsite can create a labor dispute. This is a built-in situation in this bill in which employers could easily and unjustifiably be closed off from access to the H-2 program. We are attaching to this statement some suggested language for such a definition.

3. That a new subsection (f) be added to provide for a five-year transition program to assist agricultural employers in getting away from the employment of undocumented workers on a gradual basis and to avoid any crisis situation that is likely to develop if the shift is required to take place too rapidly. We are attaching to this statement some suggested language for this new subsection. It encompasses the concept of requiring those who employ seasonal agricultural workers to register the first year of the program; to supply information on the number of seasonal workers they employed the previous year and the number they expect to employ during the year of registration. The Attorney General would be given the authority to issue agricultural work permits to undocumented aliens who have been employed in agriculture, who do not wish to apply for legalization or who cannot qualify for legalization.

During the first year of the program, employers could employ such permit-holders to fill their total need for seasonal workers. During the second year, an employer would be restricted no more than 80 percent of the permit-holders employed during the first year, the third year no more than 60 percent and reaching zero the fifth year. Starting the second year, an employer would need to recruit at least 20 percent of his seasonal workforce from the domestic workforce, from those who had been granted legalization, or from the H-2 program. This percentage increases to 100 percent after five years. At all times, employers would be required to pay the same wages and benefits and provide the same worker protections to the permit-holders as to any other workers; and when the employment of H-2 workers commences for any employer, he would be required to offer non H-2 workers the same job offer and protections as required by H-2 regulations.

4. As we have previously stated, we are convinced that the H-2 program, even if improved as we have recommended, would not be adequate to meet the needs of agricultural employers in the areas of highly seasonal, labor-intensive employment. Accordingly, we will support additional legislation, either as a separate bill or as an

addition to this bill, to provide for a more flexible foreign seasonal worker program that is not employer or commodity-specific, and that provides for less burdensome regulatory procedures. This program would provide that agricultural employers could petition the Attorney General on the need for additional seasonal workers, and the Attorney General would be given authority to issue special visas for nonimmigrants to be employed in agriculture, with monthly or annual numerical limitations. The Secretary of Agriculture and the Secretary of Labor would be consulted in determining the need for such additional workers in the various states or regions of the country.

This additional program would also provide that no such workers could be recruited or employed if qualified American citizens or documented aliens are available at the time and place needed and that the foreign workers would have the same basic protections as are guaranteed to American or documented workers. We are not asking for a program that would provide for a pool of cheap labor.

5. We urge that the bill be amended to incorporate the provisions of S. 458, introduced by Senator McClure, requiring the INS to obtain a properly executed search warrant prior to entering a farm or other agricultural operation. Currently, INS agents must obtain a warrant before entering any place of business with the exception of farms or open fields. This exception should not be allowed to continue. It discriminates against farmers and has resulted in a situation in which 50 percent of the illegal aliens taken into custody come from farms; whereas it is estimated that only 7 percent of illegals employed in this country are employed in agriculture.

6. It is important that Section 214 of the Act be amended, as already provided in this bill, to provide for federal preemption. No state should be permitted to interfere with the operation of the H-2 or other seasonal worker program.

7. It is also important to retain the language in Section 211 which provides for a de novo administrative hearing as a part of the procedure for expedited review where the Secretary has denied certification to an employer who has requested approval to recruit and employ H-2 workers.

We appreciate the opportunity to present our views and urge this Committee to give full and careful consideration to our recommendations. We agree that the Immigration and Naturalization Act needs to be reformed and updated to gain better control over our national borders; but it must not be done in such a way as to create a disastrous situation in agriculture.

ATTACHMENT A

TRANSITION PROGRAM - SECTION 211(f)

(f) the Attorney General, in consultation with the Secretary of Labor and the Secretary of Agriculture, shall promulgate rules and regulations for the implementation of a transition program to last no more than five years from the effective date of the Act, to assist agricultural employers and seasonal agricultural workers in shifting from the employment of undocumented workers to the employment of United States citizens or to temporary foreign workers as provided in this Act. Such rules and regulations shall provide:

(1) for the registration of employers of seasonal agricultural workers during the first year of the transition program, requiring submission of the basic information on the number of seasonal

agricultural workers employed the previous year and the anticipated requirements for the year,

(2) for the issuance of work permits for employment in agriculture during the transition period to undocumented workers who do not wish to apply for legalization under this Act, or who may not qualify for legalization,

(3) that during the first year of the transition program, an agricultural employer who registers under this section may employ workers holding such permits to fill his full requirement for seasonal workers,

(4) that during the second year and each succeeding year, no agricultural employer shall employ more than 80 percent of the number of permit-holders he employed during the previous year, with an additional 20 percent reduction each year until the entitlement to employ such workers reaches zero at the end of five years,

(5) that starting with the second year of the transition program, the need for seasonal agricultural workers shall be filled by the employment of United States citizens, aliens who achieve legalization under this Act, or through the certification of temporary foreign workers as provided in this section,

(6) that all workers employed under the transition program shall be fully protected by all requisite federal and state laws and regulations regulating the employment of migrant and seasonal farm workers, and

(7) that when an employer recruits and employs one or more nonimmigrant seasonal agricultural workers as provided in this section, all seasonal workers employed by such employers shall be employed under the same terms, conditions and protection as provided in this section or by any regulation emanating therefrom.

ATTACHMENT B

DEFINITION OF "LABOR DISPUTE"

A labor dispute shall be deemed to exist at any job site when 50 percent or more of the bona fide agricultural employees of an employer, without coercion, are on strike against that employer or have been locked out by that employer on account of a good faith dispute over wages, hours and working conditions.

A labor dispute shall be deemed to have terminated when less than 50 percent of the agricultural employees of the employer remain on strike; but in no case shall a labor dispute survive the term of an employee's term of employment.

A labor dispute shall bar replacements only for the number of strikers actually on strike. Certification for the remainder of H-2 workers applied for shall be granted if the application is in order and all other criteria are met.

Upon application of any interested party, the Secretary of Labor shall, within 3 days where possible, but not more than 5 days in any case, conduct a hearing to determine whether a labor dispute exists and/or whether a labor dispute has terminated, and the number of workers affected thereby.

Senator SIMPSON. Now, Perry Ellsworth.

STATEMENT OF PERRY ELLSWORTH

Mr. ELLSWORTH. Thank you, Senator. I am Perry R. Ellsworth, executive vice president of the National Council of Agricultural Employers, a voluntary membership organization.

NCAE supports the efforts to bring under control the seemingly uncontrolled flow of illegal aliens into this country, and, as an aside, in large measure supports the testimony that has already been given by Mr. Voss, so I will abbreviate even further what remarks I have, more as emphasis than additional testimony.

We make no secret of the fact that there are undocumented workers employed in agriculture. The number so employed varies from State to State, but their total is unknown. Many undocumented workers work in this country on a fulltime basis and live here. Many come to this country temporarily and then return to their homes.

The great unknown, when we consider this bill and the amnesty provisions of it, is how many of the undocumented agricultural workers are eligible for amnesty; how many who are eligible will apply for amnesty and what employment such workers will seek once granted amnesty. Even without absolute statistics and answers to that question, we agree with Mr. Voss that there is a need, let us just say, for about 300,000 workers.

Now, history has demonstrated over the years that there are not now enough legal agricultural workers to fill the need, and that there is a reluctance on the part of many who might perform agricultural work to accept and continue such employment in preference to other methods of meeting their financial needs.

Since the last Congress adjourned, agricultural employers and their associations from nearly every State in the Union have spent countless hours studying the problem and seeking ways in which they can continue to operate under employer sanctions. They have, of necessity, viewed this from the worst possible scenario, assuming a total of 300,000 undocumented workers currently employed in agriculture—and that figure may be too large or too small—and assuming that many, if not most of those workers will be ineligible for amnesty, there is the very real likelihood that the Department of Labor could not process the requests to program the requests for supplemental workers.

NCAE continues its strong support for the so-called H-2 program and urges its retention in S. 529. Experience has shown that the program works well to enable agricultural employers with a labor shortfall to obtain needed workers. There are, however, agricultural employers who urge that the Committee give careful thought to the inclusion, in S. 529 of a complementary open market labor concept in addition to the H-2 program. Such a concept would provide, that, pursuant to verification of need, employers unable to meet the requirements of the H-2 program could obtain agricultural workers from outside the United States to fill their labor shortfall.

Such a program, they state, would provide a workable mechanism for areas where large numbers of undocumented workers have been employed and would, at the same time, lead to greater and perhaps exclusive use of legal U.S. workers. NCAE understands that this proposal will be in bill form very shortly.

We would like to emphasize the fact that NCAE supports the language in S. 529, which provides specific roles for the Attorney General, the Secretary of Agriculture, and the Secretary of Labor in the promulgation of regulations governing the H-2 program and any complementary program for which the legislation may provide.

We believe that there are two "societies" being served here, one of which is workers and the other employers. Just as the Secretary of Labor has concern for workers, the Secretary of Agriculture is concerned with the production of food and fiber. The latter individual's views are essential where the H-2 program or any other agricultural worker program is under discussion. The Attorney General, who is by law charged with responsibility for the admission of persons into this country, has an obvious interest and can serve, should the need arise, as a disinterested mediator.

Senator, I think I will stop right there and leave the rest of the time for questions.

Senator SIMPSON. Thank you very much.

Mr. ELLSWORTH. Thank you very much.

[The prepared statement of Perry Ellsworth follows:]

PREPARED STATEMENT OF PERRY R. ELLSWORTH

The National Council of Agricultural Employers, a voluntary membership association whose members employ an estimated seventy five percent of the seasonal agricultural workers hired each year, appreciates the opportunity to make known its views regarding S.529, the Immigration Reform and Control Act of 1983.

NCAE, while supportive of efforts to bring under control the seemingly uncontrolled flow of illegal aliens into this country, wishes to review certain facts regarding the present agricultural labor situation, present its views regarding the impact which S.529 may have on agricultural employers and employees in general and the ability of this nation's farmers to produce food and fiber in particular, then respectfully suggest changes in the bill which it feels will enable the bill to carry forward its objectives without being highly disruptive to agriculture.

It is no secret that there are undocumented workers employed in agriculture. The number so employed varies from State to State, but their total is unknown. Many undocumented agricultural workers live in this country on a full-time basis. Many come to this country temporarily during harvest time then return to their home country which they have no intention of abandoning.

Another unknown, is how many of the undocumented agricultural workers are eligible for amnesty under the provisions of S.529, how many who are eligible will apply for amnesty, and what employment such workers will seek once granted amnesty. Even without statistics or experience as guides, it is safe to assume that if S.529 becomes law, the agricultural work force will be reduced.

History has demonstrated that there are not now enough legal agricultural workers to fill the need, and that there is a reluctance on the part of many who might perform agricultural work to accept and continue such employment in preference to other methods of meeting their financial needs.

NCAE has stated, at numerous hearings and in written statements submitted for sessions of the Select Commission on Refugee Policy and at hearings on S.2222 held during the 97th Congress, that agricultural employers are not opposed to the imposition of employer sanctions provided a rapid and reliable method exists for the identification of legal workers, and provided provision is made whereby employers can, if a demonstrated need exists, obtain supplemental agricultural workers from outside this country. NCAE supported, in large measure, the findings of the Select Commission on Refugee Policy which stated, in part:

> "The Department of Labor should recommend changes in the H-2 program which would improve the fairness of the program to both U.S. workers and employers."

NCAE's position remains unchanged.

Contrary to allegations made by others, agricultural employers would greatly prefer to hire U.S. citizens and legal non-citizens. The cost of doing so is considerably less than participating in a supplemental worker program, and there is no disruption of a legal work force by the Immigration and Naturalization Service.

On the other hand, farmers, unlike non-agricultural employers, must have sufficient numbers of reliable and able workers when crops are ready for harvest. Mother Nature has not seen fit to adjust her schedule to accommodate labor shortages.

Agricultural employers and their associations have spent countless hours studying the problem and seeking ways in which they can continue to operate under employer sanctions. They have, of necessity, viewed the problem from a worst possible scenario point of view. Assuming a total of 300,000 undocumented workers currently employed in agriculture (and that figure may be too large or too small), and assuming that many, if not most of those workers will be ineligible for amnesty, there is the very real likelihood that the U.S. Department of Labor could not process the requests for needed supplemental workers.

Assuming, for the moment, that the requests for supplemental agricultural workers could be processed by the Department of Labor, current regulations require that such workers be furnished free housing. Rightly or wrongly, there is insufficient approved housing in many parts of the country and it would be virtually impossible, both fiscally and time-wise, for agricultural employers to construct such housing. There is another complication---zoning laws. One community council recently met in extra session to change its zoning law upon learning that an employer had requested a permit to build such housing.

In order to provide a rapid and reliable method of identifying legal workers, NCAE urges the Committee to include in S.529 a requirement that a non-counterfeitable Social Security card be developed and issued as rapidly as possible to all workers. This card would be easily carried. Every person seeking employment now must have such a card, so the new one would be a replacement, not a work permit. If a photograph were included, and NCAE thinks it should be, the card could be up-dated, perhaps every ten years.

NCAE continues its strong support for the so-called H-2 program and urges its retention in S.529. Experience has shown that the program works well to enable agricultural employers with a labor shortfall to obtain needed workers. There are, however, agricultural employers who urge that the Committee give careful thought to the inclusion, in S.529 of a complementary free market labor concept in addition to the H-2 program. Such a concept would provide that, pursuant to verification of need, employers unable to meet the requirements of the H-2 program could obtain agricultural workers from outside the United States to fill their labor shortfall.

Such a program, they state, would provide a workable mechanism for areas where large numbers of undocumented workers have been employed and would, at the same time lead to greater and perhaps exclusive use of legal U.S. workers. NCAE understands that this proposal will be in bill form fairly soon.

As an alternative, NCAE suggests that the Subcommittee consider a proposal developed by the Agricultural Employment Work Group, funded by the U.S. Department of Agriculture. The Work Group was comprised of worker representatives, employer representatives and academics.

NCAE supports the language in S.529 which provides specific roles for the Attorney General, the Secretary of Agriculture and the Secretary of Labor in the promulgation of regulations governing the H-2 program and any complementary program for which the legislation may provide. The Select Commission recommended that there should be changes in the H-2 program to improve its fairness to both workers and employers. NCAE strongly maintains that there are two "societies" involved--workers and employers. Just as the Secretary of Labor has concern for workers, the Secretary of Agriculture is concerned with the production of food and fiber. The latter individual's views are essential where the H-2 program or any other agricultural worker program is under discussion. The Attorney General, charged with responsibility for the admission of persons into the country, has an obvious interest and can serve, should the need arise, as a disinterested mediator.

The language, in Section 211 of S.529 which limits an H-2 worker's stay in this country to an aggregate of 8 months in any calendar year should be deleted. The 8 month figure has no basis in fact. Because of the varying needs of agricultural employers across this country and in the interest of efficient operation of the H-2 program, the length of stay of such workers should be left to regulations as is the the current practice. Doing so will result in less paperwork for both employers and the government and will, in many, highly justified cases result in the admission of fewer workers.

Lastly, NCAE feels very strongly that employers seeking certification for supplemental agricultural labor through the H-2 program should not be required to file for such certification more than 50 days in advance of the date of need, not 80 days as provided in S.529. As a case in point, the average interval from planting to harvest for many vegetables is no more than 80 days, and no employer can know that far in advance the number of workers needed. A 50 day interval is quite sufficient.

Immigration control and employer sanctions, yes, but in a framework which makes the legislation effective and workable, not restrictive and cumbersome.

NCAE appreciates the opportunity to work with the Committee toward needed legislation that will be fair to all parties involved.

Senator SIMPSON. You both addressed one of the toughest areas. It may not be the most observable area in this legislation, but you are commenting about one of the toughest areas. This was the toughest negotiation, lots of huddling about the agricultural employers, and the temporary nature of the program, and then you get into the possibilities of guest workers. You know where I stand on that, at least. I am very much opposed to the guest worker program of any kind. It has never worked in any country that it has been tried in. We do not need that, and I have always resisted that.

You both favor increasing the visa period for H-2 temporary workers from 8 months to 11 months or more. Working for that period of time I think brings out the specter that that is then a permanent rather than temporary job, thus defeating the entire purpose of the temporary worker program as embodied by H-2. The problem of guest workers arose from Western European experience with guest worker programs because they brought in temporary workers for permanent jobs. That is what happened there.

The other one was the humanitarian, that it was said that we asked for workers and you sent us human beings. And that is what causes the problem. And at the end of the program neither the farmworkers nor their employers favored returning home.

How is the United States to avoid a similar program? I will ask each of you that.

Mr. VOSS. I think I would speak for the California experience. And I see the problem as a seasonal worker in geographic areas progressing up the State as many of our crops progress because of climactic and geographical locations. And many crops are raised on the Mexican border, in the Imperial Valley, starting to be harvested in February and in April or so we are in the southern part of San Joaquin, and another 150 miles further north and proceed up the San Joaquin Valley, the same crop progressing along as the time of the year changes, and many of these people who are presently used as seasonal workers follow that crop as it proceeds up the length of the State. So, whether 8 months or 11 months is the magic figure, I think what I am trying to address is the fact that we are talking about a traditional harvest pattern of a specific crop as we progress up the State of California. Many of these jobs last longer than 8 months, but they have a different set of employers and locations as they move along.

Mr. FIELDS. Senator, if I may talk about that for a minute.

Senator SIMPSON. Yes.

Mr. FIELDS. I think what we have concluded is this has been handled fairly well by regulation. I believe it could be done equally as well in the future.

Senator SIMPSON. Thank you.

Just another question for Mr. Voss. You state your support of the requirement of a search warrant of INS officers in the open fields. And that is a term of legal art in this game, even though the courts have consistently ruled that the entering of an open field does not constitute a violation of fourth amendment protections. So we have the reality of a situation where the INS officer spots an illegal crew in fields; goes back to town with specific geographic coordinates in the field and executes the affidavit, obtains the search warrant and the magistrate and returns to the field. It is either very likely that the crew has been alerted to that type of activity or INS presence and personnel will have moved on to another field. And, of course, the search warrant becomes invalid and, therefore, to proceed, you start the whole process all over again.

My question: How is the forcing of INS to utilize their very scarce manpower and other resources by going through all of those hoops going to be consistent with your position of increased enforcement in controlling illegal immigration?

Mr. Voss. I think there may be some difficulty there, but I think the question that must be borne in mind, an agricultural employer should be treated in the same judicial view as other employers in this country. There is no other sector of employment in this country that I am aware of that we do not need search warrants to come into a place of business and to violate that employer—at least what I consider the employer's basic rights to his own personal operations. So I think that in this case the rights of the employer are an overriding right to be protected by the Congress of this country.

Senator Simpson. I am not saying that it did not give me the creeps, but you are saying that something must be done in our country, and you are saying positively that agriculture is not hiring these people just because they are cheap, and that that is the only reason. There are some sound business reasons that do not have anything to do with that. They work and work hard and effective and willing. But if the requirement of a search warrant and, obviously, anyone who has ever practiced law, and Judge Day here has, he was a magistrate when I came upon him in my travels. Does he not look judicial? [Laughter.]

And Judge Day, I used to go and get search warrants from him. He is a very difficult fellow, and it is a very difficult thing to do in the real world. So, if we have the requirement of a search warrant, we effectively curtail the INS enforcement officials from investigating crews in the field or complying with sanctions. What incentives then would there be for agricultural employers to go through the paperwork process of the H-2 program rather than simply continuing to hire illegal workers?

Mr. Voss. I would have to believe that some of the sanctions that have been spelled out in 211 over a period of time will be the incentive to participate in any program that may become part of the law.

Mr. Ellsworth. Senator, if I may add there. I think the agricultural employers have the same incentives as any other employers. All we are asking for is equal treatment and what we know, as a matter of fact, is that in actual practice, people that are apprehended by INS, even though agricultural employment is only about 7 percent, that the total number they apprehend year after year is much greater than this. So what we have is a great unevenness in the application of the law, and that is what we are addressing ourselves to.

Senator Simpson. With regard to search warrants?

Mr. Ellsworth. Yes. They do not have to have search warrants and what they have done is gone in and pressed their enforcement on agricultural employers and not pressed it as much on nonagricultural employers. So they have obtained a great number and percentage of the apprehensions in the agricultural sector, going far beyond, probably about four times as many, as the percentage of aliens employed in agriculture. This is patently unfair to the agricultural employer.

Senator SIMPSON. Yes; I hear that. There is again the realities of the marketplace though. A search warrant with a designated building or enclosure covered under the privacy laws, and carefully so, and an address for a warrant at a location where exits can be manned by the appropriate enforcement personnel is the way it is done. But the courts, you know, it is not Congress that has made the determination. The courts have made the determination that the open field exception is very real. And I realize that that is a different treatment, but it is a different situation too in respects of the reality of the area at which the warrant would be applicable.

I might ask——

Mr. ELLSWORTH. Senator, could I make a comment to that one, please?

I am not a lawyer and, therefore, what I am going to say may not make a lot of sense, but when I was a country boy, we had open fields and we had open fields which were pretty much wide open—not a strawberry field with strawberries growing, not the field where we had the lettuce planted, and so on, but I think back to one summer I spent working in the steel mill. The steel mill had acres of ground within its area that it owned and, yet, all of that was considered to be a place, if I understand it all correctly, where a search warrant would be necessary to enter that mill ground. It seems to me that in a way what we are doing is penalizing the farmer because he happens to have a pretty good sized plant where he is working. I am wondering whether there is not something to be said for the interpretation of open fields meaning ranch land or what have you which, is really open, as opposed to a farmer's land that is in active cultivation, where he is producing a crop and seeking a profit the same as the operators of this steel mill, or the iron ore mines in Minnesota. And I think sometimes the term "open fields" is one that needs looking at more than anything else.

Senator SIMPSON. That may well be. And I hear what you are saying.

I want to ask, what has been the experience with your members with the current H-2 program in terms of H-2 workers actually going home at the end of their temporary jobs?

Mr. VOSS. At the present time there is some skipping of ship, so to speak, some AWOL's that do not go home. But the great majority, I think I am correct in this, that 95 percent of those workers return home. And the reason they return home is because that is where home is, and they did not intend to stay up here. They intended to go home.

Another thing is employers are under bond to the Immigration and Naturalization Service to see that those workers go home. If they do not deliver those workers, then they are liable to lose that bond that they have posted for that worker. And another thing, it seems to me, that would work very much in favor of eliminating what I will call AWOL's among H-2's, to answer your earlier question, is the fact that with employer sanctions and with a visa that has an expiration date on it, they are not going to have any jobs up here either. So if employer sanctions as applied to all employers, prohibiting them from hiring a person not legally authorized to work in this country, is in effect, then, certainly, no agricultural employer is going to hire any person and risk the steep fines that are involved if that person's visa has expired, as would be the case with someone who has come in under an H-2 program, which has a definite ending date.

Senator SIMPSON. How many of your members have actually tried the H-2 program and found out how it actually works as it should, even perhaps if it does not work perfectly? How many, at least, have tried to find out about it?

Mr. VOSS. I cannot give you exact numbers, Senator, but eastern apple growers from Virginia and West Virginia, north and east, with the exception of Pennsylvania, have used the program. Florida has used it, is using it now in harvesting sugarcane. H-2 workers are being used in Arizona for the harvest of citrus and in Virginia and North Carolina for tobacco harvests.

Most workers that use the H-2 program do so because they need workers. They are willing to go through the exercise of paperwork involved, go through the Labor Department-mandated recruiting requirements and pay the additional wages that are involved, or guarantee those additional wages, do so because they do not have other workers that can do the job or will stay to finish the season.

Once they get the system under control, once they understand the complications of it, and my association has just published a manual which I think is the best document out on it, and it is almost 300 pages deep to describe what it is all about; once they get that under control, the system works.

Senator SIMPSON. Once they understand the complexities then they can also understand the benefits of it, I would think.

Mr. VOSS. Yes, sir, that's right. But one of the complexities in rules in this situation, the safeguard is that the Labor Department must certify that there are not U.S. workers available to do the job and that the admission of these workers would not have an adverse effect on U.S. workers similarly employed. In fact, given enough time, I could tell you that the interests of these workers usually raises the pay and living scale of U.S. workers.

Mr. ELLSWORTH. Senator, if I could add there, we have had the unfortunate experience in the last few years of having to go into Federal district court and get a court order to require the Secretary to issue a certification when more workers were needed picking applies and so forth. That may be one of the reasons employers might be reluctant to try the program.

And let me say further, that if any large number of farmers right now would apply for H-2 certification, representing any large number of workers, there is no way in God's world that the Labor Department could handle those regulations.

Senator SIMPSON. Well, there is this other important criteria, and that is we want to be assured in the use of any temporary workers, whatever the term one would want to use, that U.S. farmworkers are protected against displacement in such a system. Would you all not concur with that?

Mr. VOSS. Yes, sir.

Mr. ELLSWORTH. I would go one step further. I think I said it in my report. You take a pencil and sit down and add it up and any employer, any agricultural employer will soon come to realize that the cost, just the dollar cost, of using H-2 workers far exceeds the cost of using U.S. workers. It is a costlier procedure, but I guess it is like when you are out in the middle of a long highway with no gas station around and a fellow comes by and offers you 2 gallons of gas for $5 a gallon. The chances are you will take it because you have to get someplace.

Senator SIMPSON. I think I remember testimony last year where it said that the migrant—U.S.-citizen migrant—agricultural migrant population just dropped precipitously over the years.

Mr. FIELDS. Ninety-nine percent of the hired farm work force. It used to be closer to 40 and now it is down to less than 10 percent of the agricultural hired work force.

Senator SIMPSON. And these were people in the past who really made that their living, American citizens, but that has been a critical cutback.

Mr. ELLSWORTH. I could make a suggestion as to what contributed to it very materially.

Senator SIMPSON. Can you do that in 30 seconds?

Mr. ELLSWORTH. Farm labor contractor registration made it so difficult for crew leaders to stay in business that they dropped out of business and the workers no longer had someone to find and provide them with work and transportation around the country.

Senator SIMPSON. I am going to have to give someone equal time in a later hearing.

Mr. ELLSWORTH. I appreciate that.

Senator SIMPSON. Well, I thank you. It is a delicately balanced provision for us. I hope that somehow, and I say this without intent to crater anything, I hope the Secretary of Agriculture can somehow, in whatever we come out with, be involved in this process, not for the purpose of abusing or changing what the Secretary of Labor has done or has not done, but it seems to me when you are talking about agriculture you should have the Secretary of Agriculture involved in some way. It just seems so natural and so inappropriate that he or she be excluded and, yet, I can tell you that this is a tenuous balance right in here. If it be tilted too far to temporary, you have organized labor saying this is impossible, you have gone too far. If you tilt it the other way and the scrap comes from the growers.

It was very apparent in the House debate, what there was of it, that that issue was there. And I can only tell you that everything you are looking at in that legislation that I reintroduce from here, and much of what Ron is introducing in the House, is already a compromise of rather extraordinary proportion. But we will be listening and see if we can get something here that meets the test of protecting U.S. farmworkers, which you all agree must be done, and meeting the need of the fellow with crops being ready for harvest and no questions asked. That is what I am trying to find, so you know where I am coming from.

Thank you very much.

Mr. VOSS. Thank you, Senator.

Senator SIMPSON [gavelling]. You might withdraw from the hearing room and continue your activities. I would deeply appreciate it.

The final panel this afternoon is Dale de Haan, director of immigration and refugee program, Church World Service, chairman, Committee on Migration and Refugee Affairs, American Council of Voluntary Agencies; Tom McMahon, executive director, Environmental Fund; and Hyman Bookbinder, Washington representative, American Jewish Committee.

It is a pleasure to have you here. I remember your testimony last year, Mr. Bookbinder. I am anxious to hear what you have to share with us today.

Why do we not just take these in the order of appearance on the agenda. It is good to see all of you again and hear your views.

STATEMENTS OF DALE S. de HAAN, DIRECTOR, IMMIGRATION AND REFUGEE PROGRAM, CHURCH WORLD SERVICE, CHAIRMAN, COMMITTEE ON MIGRATION AND REFUGEE AFFAIRS, AMERICAN COUNCIL OF VOLUNTARY AGENCIES; TOM McMAHON, EXECUTIVE DIRECTOR, ENVIRONMENTAL FUND; AND HYMAN BOOKBINDER, WASHINGTON REPRESENTATIVE, AMERICAN JEWISH COMMITTEE

Mr. de Haan. Thank you, Mr. Chairman.

Senator Simpson. It that microphone attached there? Pull that a little closer, Dale.

Mr. de Haan. Mr. Chairman, as you know, I am here wearing two hats today: as chairman of the Committee on Migration and Refugee Affairs of the American Council of Voluntary Agencies and also as the director of the immigration and refugee program, Church World Service of the National Council of Churches.

There are two statements and I would like to submit those for the record and perhaps highlight both statements.

Senator Simpson. Without objection, so ordered.

Mr. de Haan. Mr. Chairman, I would like to request that the record be kept open. I know that some of the agencies associated with ACVA would like to file a statement sometime in the next week or two.

Senator Simpson. We will have it open for 10 days since we have three hearings. That will be fine.

Mr. de Haan. Thank you very much.

With respect to the ACVA comments, the agencies are listed there in the testimony I have submitted. I just want to highlight a couple of things.

First of all, as you know, Mr. Chairman, these agencies have a long history of association with migration issues. It goes back many, many years in favor of equitable, compassionate and flexible migration policies. I might point out that the agencies, all of us, have a great deal of investment in the bill which is before you, before the committee, as whatever may ultimately be enacted very much affects our constituents in the houses of worship and in the community centers and elsewhere where there are immigrants and refugees, both documented and undocumented. So, we want to commend you for your leadership in this area.

We strongly feel that there is a very urgent need for immigration reform.

LEGALIZATION

There are two items that I would like to highlight. One is the matter of legalization. Now, on this particular issue, I think the record of the agencies in terms of their views is fairly well known. We feel we are dealing with a fait accompli, people are here. The alternative to legalization appears to be mass deportation, which, obviously, is not an option from either a moral or a practical standpoint.

In the area of legalization, I think the question really is, is it best that this population, which is present in our country, be here legally or illegally? Our answer is that we have to bite the bullet. The problem has been festering for many, many years. A subclass of people is present in our society and our economy. We feel very strongly that the approach to legalization should be extremely comprehensive in two respects: first, the cutoff date should be current, and, second, legalization should be inclusive of all undocumented aliens. By this I mean there should be no discrimination in terms of the treatment of people, except in the context of the cutoff date and the exclusionary provisions of the Immigration Act.

Second, on the question of legalization, we hope that the program and the procedures which are established can be simple. There have been many discussions between the voluntary agencies and offices in the executive branch, the Immigration Service, and so forth. We have been trying to stress simplicity, so as not to overburden the administrative capacity of Government and of the agencies that may be involved in the program.

And, finally, the voluntary agencies are prepared to assist the Immigration Service in the implementation of any legalization program. We want to do this and we want to be helpful, as most of us have networks around the country in areas where there are heavy concentrations of undocumented aliens. But I want to underscore here, Mr. Chairman—I know the intent of Congress is to have the agencies participate in the program—but I want to underscore here that in the course of the discussions we have had with the Immigration Service, it sometimes appears that in their mind we are a quasi-Government agency and sort of an enforcement arm of the Government.

We have clients, we have roles to play in terms of protecting people. And I just wanted to underscore that the independence and integrity of the private sector should be protected. And I just make that point because I think it is extremely important for the success of the legalization program.

As you know, there is a great deal of fear of the government in the community of undocumented aliens. I do not want to overstress that or belabor the point. But I think if the program is to be successful and people are to come out of the woodwork, so to speak, I think if they can go to the voluntary agencies and others in the private sector to assist them in this legalization program, and feel they can go in confidence, I think this would be extremely helpful in terms of the success of the program.

I underscore again that the independence and the integrity of the agencies is extremely important.

The other point I wanted to highlight——

Senator SIMPSON. We do have the 5-minute limitation. I hate to use that when there are so few of us here, but could you summarize a little bit?

Mr. DE HAAN. Yes; I will.

Senator SIMPSON. Thank you.

Mr. DE HAAN [continuing]. In the ACVA testimony has to do with putting refugees under a cap. We oppose that. We appreciate your leadership on this score and we hope that this will continue.

There are just two items that I want to add to the testimony I submitted in behalf of Church World Service. They both relate to the question of asylum. I bring them to your attention because they are current issues, and I think the committee, you, Mr. Chairman and the committee should be aware of them. The one relates to the Haitians who have been released from detention under court order of Judge Spellman in Florida.

This release program is a very good one but it has become very much a costly program. It is an onerous program and people are being exploited in this program, the Haitians themselves.

There is a very simple administrative way to resolve some of the problems in this program by giving the Haitians entrant status, by taking the entrant regulations and moving the cutoff date from October 10, 1980, to sometime in 1982 to cover these people. There are only 2,000. I think this would be the humanitarian and practical thing to do in terms of this group.

The other matter that I wanted to raise very briefly is the presence in this country of Central American refugees from El Salvador, Honduras, Guatemala, and elsewhere. I think that a formula should be found for these people in terms of temporary refuge, maybe not for all, but, certainly, for those who have reason to claim it.

Thank you very much.

Senator SIMPSON. Thank you very much.

[The prepared statements of Dale S. de Haan follow:]

STATEMENT

of

DALE S. de HAAN

CHAIRMAN

COMMITTEE ON MIGRATION AND REFUGEE AFFAIRS

AMERICAN COUNCIL OF VOLUNTARY AGENCIES FOR FOREIGN SERVICE

Mr. Chairman, members of the Subcommittee, it is a pleasure for me to address the Subcommittee today with a few comments with respect to the Immigration Reform and Control Act (S.529) in my capacity as Chairman of the Committee on Migration and Refugee Affairs of the American Council of Voluntary Agencies for Foreign Service (ACVA), which includes:

American Council for Nationalities Service
American Fund for Czechoslovak Refugees
Buddhist Council for Refugee Rescue and Resettlement
Church World Service
HIAS (Hebrew Immigrant Aid Society)
International Rescue Committee
Lutheran Immigration and Refugee Service
Migration and Refugee Services, United States Catholic Conference
Polish American Immigration and Relief Committee
The Presiding Bishop's Fund for World Relief/The Episcopal Church
Tolstoy Foundation
World Relief of the National Association of Evangelicals
YMCA of the USA

I want to make clear first of all that all of the agencies listed above support immigration reform. Many of us have been involved in the current reform effort dating back to the days of the Select Commission on Immigration and Refugee Policy and before, and have been participants in the processes of this and other committees and forums. As you know--and as my presence today hopefully illustrates--we have a considerable investment here, as whatever may ultimately be enacted very much effects both our constituents throughout the nation in houses of worship, community centers, and elsewhere and our clients, which includes immigrants and refugees, the documented and undocumented.

Most of our agencies have interests and concerns with respect to all the titles of the proposed legislation. However, as a committee of agencies, we collectively have particular interests in two areas: legalization and refugee admissions ceilings.

Legalization

Many of us have years-old policies for the legalization of undocumented aliens in the United States. There are many reasons for this, most of which have already been introduced to the debate on immigration reform over the past several years. For the most part, we feel there are simply no viable alternatives to legalization. It needs always to be remembered that we are talking about the fates of potentially millions of people whose permanent presence in the United States is probably a fait accompli. Massive deportation is not an option, either practically or morally. While there are other measures which might be taken to pressure undocumented persons to repatriate--such as a retroactive employer sanctions--we do not believe they would result in the departure from this country of substantial numbers of undocumented persons. After all, we are dealing with individuals who have developed ties here--many substantially so--and have basically burned their bridges with their homelands.

Considering all this, the question really becomes, in our view, is it best that this "permanent" population be here legally or illegally? The degree of exploitation of undocumenteds that we and our constituents have witnessed have led us to conclude that legalization--and a generous one--is the avenue upon which we should be travelling.

Let me make a few comments in the way of a couple of principles which we feel should guide the development of a legalization program through the legislative phase, the regulatory phase, and beyond.

First, the program should be comprehensive. The reasons for a legalization program seem, to us, to dictate this. Most of the arguments are commendably covered in the Senate Judiciary Committee report prepared last year on the Immigration Reform and Control Act (Report 97-485, p. 19), namely, "to avoid wasteful use of the Immigration and Naturalization Service's limited enforcement resources," "to allow dependent employers to continue lawfully hiring from this pool of labor," and, most importantly, "to eliminate the illegal subclass now present in our society." All of these--and particularly the last--point toward a program which covers comprehensively the undocumented population and which "eliminates the illegal subclass."

Being "comprehensive" could mean a couple of things in practical terms. First, it means that the cut-off dates for the program should be made current, for all the reasons outlined above. Secondly, it means the program should be inclusive, within the cut-off dates eventually legislated and the appropriate exclusions of the law. As we believe this to be the intent of Congress, we would like for this to be made clear if not in the bill itself, then in its legislative history. We would be prepared to work with the Subcommittee on appropriate language to this end, if necessary. Our experience last year in discussing potential regulations indicates that such clarity of intent becomes important in the framing of implementing regulations and the designing of the legalization program.

A second principle, in addition to being comprehensive, is that it is important to the success of the legalization program that the independence and integrity of private voluntary agencies assisting in the program be recognized. We applaud the Congress for recognizing the important role we as agencies can play in the legalization. We believe our involvement in screening and application acceptance will be advantageous to the intent of the program as a whole, and will also help provide added safeguards to those applicants whose status may be unclear, or for those who are clearly ineligible to apply for legalization. However, our involvement in this way can only be effective so long as the undocumented population is assured of our independence from government authorities, namely the Immigration and Naturalization Service, and that, thereby, the presence of undocumenteds in our offices will not result in their deportation. It is important, then, that one of the fundamentals of our involvement with government agencies in this program be the concept of a cooperative endeavor as against control. We have worked effectively with government agencies in the past in the implementation of programs of joint interest and believe such a cooperative endeavor can be worked out in this case. It is our request, again, then, that the legislative history make clear the importance which this Subcommittee places upon our independence as described within the above context.

Refugee Admissions

Another area in addition to legalization in which we as agencies have great concern is that refugees be kept out of this bill. We shared the Chairman's opposition last year to efforts to place a legislated ceiling on the numbers of refugees and immigrants to be admitted each year. There was also an attempt on the Senate floor to provide a Congressional veto over refugee admissions above a "normal flow." As you know, these attempts did not succeed. We think this was wise and encourage the Subcommittee to oppose any efforts to merge refugee admissions procedures into the bill.

As the Subcommittee knows, the Refugee Act of 1980 established a procedure in which the Administration and Congress consult in determining refugee admissions ceilings for the subsequent fiscal year. This consultation procedure has been in place for three years and, in our view, has been an adequate mechanism for regulating annual admissions. This being the case, we do not see the necessity to enact modifications to the process which are both radical and, in fact, harmful. Both a legislated cap and a legislative veto of admissions over a "normal flow" complicate the country's ability to react quickly at precisely those times when flexibility is most needed.

Conclusion

Again, I want to thank the Subcommittee for this opportunity to share with you some of the views of the agencies represented on the Migration and Refugee Committee of ACVA. We want you to be assured of our desire for good reform and of our commitment to work with you to this end.

STATEMENT
of
DALE S. de HAAN
DIRECTOR
IMMIGRATION AND REFUGEE PROGRAM
CHURCH WORLD SERVICE

Mr. Chairman, members of the Subcommittee, it is a pleasure for me to address the Subcommittee today with a few comments with respect to the Immigration Reform and Control Act (S.529) in my capacity as Director of the Immigration and Refugee Program of Church World Service. We and our member Protestant denominations are very much interested in immigration reform. We have been involved in the current reform effort dating back to the days of the Select Commission on Immigration and Refugee Policy and before, and have been participants in the processes of various Congressional committees and other forums. As you know--and as my presence today hopefully illustrates--we have a considerable investment here, as whatever may ultimately be enacted very much effects both our constituents throughout the nation in churches, community centers, and elsewhere and our clients, which include immigrants and refugees, the documented and undocumented.

You would be interested to know that virtually all our 32 member denominations have at their highest levels examined and debated the Simpson-Mazzoli bill. In many cases, denominational assemblies have voted on specific policies related to immigration reform covering many of the issues which the Subcommittee is looking at in its current hearings. Today, we represent these views.

It will not be necessary for me to make specific reference to the proposed legalization program or to possible amendments to include refugee admissions in the subject bill. Our views on these matters are covered within the testimony today of the Committee on Migration and Refugee Affairs of the American Council of Voluntary Agencies for Foreign Service (ACVA).

Employer Sanctions

One concern we have is with the increase in discrimination in hiring which may result from employer sanctions. Much has already been said about this, so I do not intend to belabor the point. However, I would like to highlight a couple of possible approaches which were discussed last year and which peaked the interest of the Protestant community. We would strongly urge the Subcommittee to consider seriously in its current deliberations the following options.

One option is the "sunsetting" of employer sanctions after an appropriate trial period. This possibility was considered by the Committee last year, but, in the end, was voted down. However, we believe the intensity of minority concerns expressed in the last few months not only by minority organizations but also by minorities and others in our own pews justify a much closer look at a sunset provision. The history of immigration legislation, in our experience, is that once it becomes law, the Congress does not want to touch the contentious issue of immigration again for several years. A sunset provision would overcome this tendency and force an evaluation of the discriminatory impact of sanctions.

Another option is to limit the sanctions, for the time being, to employers who have a history of hiring undocumented aliens or who are known hirers of undocumenteds. This approach came under consideration in the other body, but time did not permit it to be fully debated.

This approach, the so-called "Schroeder Amendment", is a compromise on the employer sanctions issue that holds promise for reducing the potential for ethnic discrimination. It provides for a selective application of employer sanctions, as not all employers would be required to examine identity documents, only those who have been identified as problem employers. Since not all employers would be under the threat of prosecution for hiring undocumented persons, not all employers would have an incentive to avoid hiring ethnic applicants. This would substantially reduce the threat of discrimination in employment. In addition, the fact that the Attorney General's enforcement efforts would be focussed on a smaller number of employers means that there could be better supervision of the hiring practices of employers.

From the perspective of efficient use of enforcement resources, this approach is highly desirable. Instead of wading through the hiring records of all employers, the Attorney General could direct attention to the few employers who are shown to have violated the law. This is a common-sense approach. Based on current enforcement of the labor laws, the INS personnel already know who the big employers of undocumented aliens are. This approach allows the Attorney General to do what he has long wanted to do: prevent employers from continuing to hire the undocumented, even after they are caught.

From the perspective of employers, this should be a highly desirable substitute, as it would allow the millions of innocent employers to escape any paperwork duties. Only those who have been warned of their violations through the administrative process can expect to have the duty of examining documents placed upon them.

Again, we urge that these two approaches be considered as ways of addressing the discrimination issue.

Adjudication and Asylum

Another concern we have is with adjudication and asylum procedures. We have been in the forefront in the area of asylum for many years, and have been intensively involved over the past decade with Haitians and, now, refugees from Central America.

Ten years ago, our asylum procedures in the United States were very much undeveloped. The system was ripe for abuse, and indeed the courts over the past intense decade as well as the political process itself were important in addressing certain abuses and in protecting those needing safe haven in our country. It has become clear to us--just as it has to the Subcommittee--that it is essential that we reform the administrative system for asylum application. There has been a general trend among Western countries overburdened by the asylum phenomenon to streamline asylum procedures. Certainly, our own backlog of over 100,000 applications for asylum requires that we take a hard look at reform. We think the direction to go is the one the Subcommittee has taken: to professionalize the cadre of officers and judges adjudicating asylum claims and to establish an administrative board to oversee their actions.

As the Subcommittee has witnessed, one of the most difficult aspects of this kind of reform is to streamline without infringing upon the essential rights of those subject to the process. In this regard, I offer three observations.

First, an earlier version of the Senate bill last year ascribed greater independence to the proposed Immigration Board, with its composition subject to Senate apprpval. We supported this for we felt this was an important step toward separating adjudication from policy. By keeping the Board independent of such policy-making organs as the Department of Justice or the White House, there would be greater prospect of asylum decisions being made more specifically on the merits of individual cases, rather than on the basis of particular Executive Branch foreign or domestic policies.

Second, we have found certain habeas corpus provisions to be important to our own asylum work. It is unclear to us, even after reading the Committee's explication in its report on the bill last year, the extent to which habeas would now apply. The report is commendable in stating, "(T)he restriction (in the bill) on judicial review is not intended to prevent a federal court from correcting through habeas corpus proceedings a violation of due process" (p. 14). However, the Subcommittee might consider whether the current language of the bill might be misconstrued to preclude adherence to the Protocol Relating to the Status of Refugees and other such relevant treaties and statutes.

A third observation is that while there may be valid arguments for limiting individual case review--particularly if there is established an independent Immigration Board--would there not be instances in which the retention of the ability to pursue class actions would be desirable? Even with an independent Board, those on it would potentially be subject to pattern and practice lapses in respect for due process for which class actions would likely be the most efficient and expedient means of redress. We observe that the banning of class actions raises even more questions when faced with the potential for a very narrow interpretation of habeas corpus in asylum cases.

A final comment with respect to adjudication and asylum relates to the proposed "summary exclusion" procedures. The concept has already undergone considerable discussion, but we suggest it deserves further evaluation, particularly as it effects those who would be applying for asylum. A particular problem we foresee is that, based on our experience, applying for asylum--and even communicating to an official one's intention of applying for asylum--often requires knowledge of technical terms not readily known to refugees seeking safe haven here. We have witnessed instances in which Immigration officers have made good faith efforts to determine whether an individual seeks asylum in the U.S., but because that individual was unable to articulate his intentions with the requisite technical vocabulary, he was turned away. We have later found that many of these individuals did indeed suffer persecution in their home countries, but simply did not have the knowledge or wherewithal at the time of attempting an entry into the U.S. to explain their plight in terms which would immediately identify them as asylum applicants.

To given an example, we are aware of one instance in which INS officials asked directly a group of Haitians through a Creole interpreter whether they intended to apply for asylum. The entire group replied with a resounding, "No." Later investigation revealed that the interpreter had used the Creole transliteration of the work "asylum," which in that language has nothing to do with refugee status, but has everything to do with the state of one's mental health. Upon further questioning, it was revealed that many in the group did in fact intend to apply for asylum and desired counsel.

These are the types of problems immigration officers will face with summary exclusion. While special training may be of considerable help, we ask that some additional attention be given to the proposed procedures themselves.

Numbers and Preferences/Temporary Workers

In our own consideration of both numbers and preferences questions and temporary workers, we have given great importance to the recommendations of the Select Commission on Immigration and Refugee Policy. The Select Commission found no evidence that current immigration runs counter to our national interests and reaffirmed our historic emphasis on family reunion. In this connection, we urge that immediate family reunion remain outside the annual immigration ceiling. We also urge the retention of the current second preference and also fifth preference, at least for unmarried siblings.

As for temporary workers, the Select Commission advised against the establishment of an expanded temporary worker program. We concur with this and suggest that the H-2 visa program in current law is adequate. While there may be important adjustments which need to be made to the program, these can probably be accomodated through administrative measures with Congressional oversight as needed.

Conclusion

Again, I want to thank the Subcommittee for this opportunity to share with you some of the views of Church World Service and the Protestant, Anglican, and Orthodox churches we represent. We want you to be assured of our desire for good reform and of our commitment to work with you to this end.

Senator SIMPSON. Mr. McMahon, please.

STATEMENT OF TOM McMAHON

Mr. McMAHON. Mr. Chairman, I am Tom McMahon, the executive director of the Environmental Fund, Washington, D.C. I would like to express my thanks to the committee for this opportunity to testify on the Immigration Reform and Control Act of 1983, S. 529.

With the chairman's permission, I would like to ask that the printed statement be permitted for the record.

Senator SIMPSON. Without objection, so ordered.

Mr. McMAHON. The Environmental Fund is a nonprofit, public educational foundation that studies the impacts of U.S. population size and growth on our natural resource base, the environment, and the economy. The fund is unique among population and environmental organizations in that its objective is to persuade the United States to adopt a population policy that will adjust the number of people to a level that will not destroy our natural resources and damage our environment.

I would like to commend the committee's wisdom in drafting a bill that does not mention foreign assistance as a possible solution to U.S. immigration problems.

In my written testimony, I outlined the fund's position on the major titles in this bill. Let me summarize them briefly before I discuss the fund's position on the growing seriousness of the push factors which the current world economic crisis has caused in the LDC's.

First, we are in complete agreement that employer sanctions are the best means for gaining control over illegal immigration. However, I am concerned that the language describing enforcement is rather weak and should be strengthened. I also urge that the committee take into account the need for additional budgetary support for law enforcement agencies which will be assigned to implement employer sanctions.

Second, the fund concurs with the establishment of a ceiling on legal immigration. But we believe that the number cited in the bill is too high. We also suggest that the bill be amended to include periodic review of the ceiling every 2 or 4 years, and that the ceiling be reset on the basis of a system that would evaluate the adequacy of the United States resources of agricultural and forest land, water, minerals, and other required resources to support its populace. This periodic review and resetting of the ceiling should include an assessment of U.S. labor force and military manpower needs in relation to our demographic trends and projections.

Third, the fund believes that the amnesty provision as written in the bill is too sweeping and unworkable.

I would like to spend the remaining time speaking to the question of the push factors that motivate foreign nationals to come to the United States.

The unprecedented increases in illegal immigration during the past decade have created a situation where net immigration will soon become, if it has not already, the dominant factor in U.S. population growth.

Several years ago, the Gallup International Research Institute conducted a worldwide study of human needs and satisfactions. This research project uncovered a startling fact. More than one out of every four Latin Americans would like to emigrate from their country of birth and come and live in the United States. I believe that the recent increase in illegal immigration results from this desire to emigrate to the United States galvanized by the disastrous deterioration of social and economic conditions in Latin America.

In 1980, the combined population of the developing countries of the world was 2.3 billion. By the turn of the century, this population will grow to 3.6 billion, and nearly triple to 5.6 billion in less than 50 years. These U.N. projections take into consideration the lower fertility that is occurring because of family planning programs in these countries. But the more critical factor for our discussion is the growth of the LDC labor force when compared with the investments required for creating new jobs.

In 1980, the combined labor force of the less developed countries was 843 million people. By the year 2000, less than 18 years from now, the labor force will nearly double to 1.43 billion and more than triple by the year 2030, when it will have risen to 2.56 billion. Annual new job requirements were 22.7 million in 1980. These will increase to over 37.5 million by the turn of the century, to about 41 million just 10 years later, by 2010. These are startling statistics.

Experience tells us that these projections are relatively accurate unless some disaster strikes, and famine takes over. Remember that all the young people who will be seeking work for the first time in the year 2000 have already been born.

I would like to address myself to Mexico, the country that sends the largest number of legal and illegal immigrants to the United States. Mexico has some very serious problems today. I speak to this subject with some authority since I spent 20 years working in Latin America on development and population programs. Recently, I spent 2 years producing Spanish language documentary films for the Mexican Government population program. So I really know Mexico's problems. These films have been shown throughout Mexico on television and in commercial theaters.

Even when we take into consideration the fertility decline that has taken place in Mexico recently because of their population program, that country will count no fewer than 108 million people by the year 2000 and will increase to 185 million by the year 2030. These are the Mexican Government statistics.

Mexico's job requirements now and in the future are staggering. More than half the population is under 17 years old. In the period of high GNP growth during the oil bonanza days of the late 1970's and early 1980's, Mexico's economy was unable to reduce its unemployment and underemployment rate. Last year, Mexico lost 400,000 jobs. This means that nearly 1 million additional Mexicans joined the ranks of the unemployed last year.

The capital requirements to create needed jobs become horrendous when we look at the data. To keep abreast, Mexico also needs 500,000 new houses annually. It needs billions to purchase imported foodstuffs. Once an exporter of grain and other agricultural commodities, Mexico must now import every staple it requires for its diet: corn, wheat, beans, protein for the poor, rice and soybeans for cooking oil.

Having recited this litany of needs, is it any wonder that millions of Mexicans seek work in this country illegally? Obviously, the United States cannot solve Mexico's or the world's population and unemployment problems. But we must remember that these forces which drive people from their homelands will increase and not decrease in the next several decades. We must secure our borders and limit immigration to a level that insures that we will not destroy our own resource base that has become an important breadbasket to feed the world.

What we need is a strong and adequate immigration law this year. The American people want this. I would hope that Congress could pass this legislation posthaste.

Thank you.

Senator SIMPSON. Thank you very much, Mr. McMahon.

[The prepared statement of Thomas F. McMahon follows:]

ENVIRONMENT POPULATION
THE ENVIRONMENTAL FUND
1302 Eighteenth Street, N.W. Washington, D.C 20036 202-293-2548

TESTIMONY OF MR. THOMAS F. MCMAHON
EXECUTIVE DIRECTOR
THE ENVIRONMENTAL FUND (TEF)
BEFORE THE
SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY OF THE
SENATE COMMITTEE ON THE JUDICIARY
U.S. SENATE
WASHINGTON, D.C.
FEBRUARY 24, 1983

I am Tom McMahon, Executive Director of The Environmental Fund, Washington, D.C. I would like to express my thanks to the Committee for this opportunity to submit testimony on The Immigration Reform and Control Act of 1983, S. 529.

The Environmental Fund was established ten years ago and has grown to become a public foundation with membership throughout the U.S. The Environmental Fund's mission is to study the impact of U.S. population size and growth on our natural resource base, environment and economy. We are unique among population/environmental organizations since we work to persuade the United States to adopt a population policy that will keep the numbers of people in balance with our resources and our environment. We alert government and the private sector to the causes of population growth and warn them of the consequences that uncontrolled growth will have on the quality of life in America.

THE IMPORTANCE OF IMMIGRATION REFORM

Right now, we focus on immigration because our studies show that it is a major determinant of the size of America's population in the future. If current fertility and mortality trends continue, by the year 2025 all U.S. population growth will result from post 1980 immigrants and their descendants.

TEF computer projections indicate that the 1980 U.S. population of 226 million will grow to 279 million by the turn of the century and to 336 million by the year 2030 assuming a net annual immigration level of 1.2 million. In our view this is an approximation of the current situation. If net annual immigration were reduced to 500,000, the population of the U.S. will be 263 million by the year 2000 and 291 million by the year 2030. This approximates what we believe will occur if this bill is enacted into law and is effectively enforced. (see appendix, table 1 & explanatory notes) Clearly the failure to adopt this measure will add at least an additional 16 million people to our population by the year 2000 and another 45 million people by the year 2030. An examination of this data shows, that given constant fertility and mortality, immigration becomes an increasing proportion of our growth. For example if Congress fails to act on this issue, 65% of our growth will be due to immigration in the year 2000 and 100% by the year 2025. (appendix, table 2)

Given today's unprecedented federal budget deficits and persistently high unemployment one cannot ignore the question: To what extent do undocumented aliens take jobs away from U.S. residents in the labor force, and how much does this cost the U.S. taxpayer? If we assume that there are four million illegal aliens working in the U.S. and 30% of them currently displace legal residents then this results in 1.2 million Americans being out of work. TEF calculates that this costs the taxpayer $8.4

billion in annual transfer payments. (For a more detailed explanation and analysis see appendix, table 3.)

It is clear from our calculations and projections that comprehensive reform of U.S. immigration law is long overdue. We commend the Committee's initiative for introducing this Bill and for conducting these hearings early in the 98th Congress.

PROBLEMS CONNECTED WITH IMMIGRATION REFORM LEGISLATION

Since its founding The Environmental Fund has devoted considerable effort to the study of the problems associated with U.S. immigration. Recently we have enhanced our analytic capabilities by developing the QUIC DATA computer program. TEF firmly believes that the most important action that Congress should take is to enact effective legislation that will control illegal immigration. In this regard we concur with the Senate's judgement that employer sanctions are the best way to remove the attraction of possible employment in the U.S. that has motivated millions of workers to come here illegally. Since the determination of a job-seeker's eligibility is essential for the successful implementation of employer sanctions, we strongly urge that Congress insure that a sound, fraud resistent worker verification system be implemented. In our view Congress should carefully consider a call-in verification system based on the Social Security number. While this system would entail considerable start-up costs, these would be offset by savings to the U.S. Treasury resulting from reduced job displacement and lower transfer payments.

In keeping with our historical tradition of welcoming immigrants, the bill sets a ceiling for annual admissions that provides for the resettlement of more legal immigrants for permanent residency in the United States than the rest of the nations of the world combined. When refugee admissions are added to this ceiling, well over one-half million enter annually. TEF believes this number is too high.

We think it wise that the ceiling be reviewed and adjusted periodically, perhaps every two or three years. When this reexamination is undertaken by the legislative and executive branches of government for the first time we, strongly admonish these bodies to set up a system to derive future immigration ceilings from an evaluation of the adequacy of the United States' resources of agricultural and forest land, water, minerals, and others required to support its populace. In addition this periodic review should include an assessment of the U.S. labor force and military manpower needs and a study of demographic trends and projections.

TEF believes that amnesty as written into this bill is too sweeping and unworkable. By granting amnesty, the U.S. Government sets a precedent that suggests that future pardons will be granted. Just the prospect of amnesty will encourage foreign nationals to come here in ever increasing numbers. It will also give the impression that those who violate our laws are rewarded while hundreds of thousands of law-abiding citizens of foreign countries who dutifully await legal admission to the U.S. under the quota system are penalized. Amnesty will also provide profiteers who traffic in fraudulent documents a bonanza as increased numbers of foreign nationals, encouraged by amnesty, take the risk and enter the U.S. illegally.

To allow illegal aliens who have truly established themselves in America a chance to become citizens, TEF believes that moving the registry date from 1948 to 1974 is sufficient.

U.S. CANNOT SOLVE THE "PUSH" FACTORS

Some legislators, individuals and organizations have criticized this bill for failing to recognize and address the "push" factors of overpopulation, unemployment and poverty that motivate people in less developed countries to immigrate illegally. However noble the ideals of these critics we submit that it is unrealistic to think that the U.S. can begin to solve problems of this magnitude during the next two decades. Therefore we would urge the committee to follow its current course and continue to keep consideration of these matters out of the bill since passage as soon as possible is urgent.

The Environmental Fund has compiled population , labor force and new job requirements data for the world's less developed countries. Based on these statistics we have run computer projections that indicate the staggering magnitude of the "push" factors.

The 1980 combined population of the LDC's was 2.3 billion and will grow to 3.6 billion by the year 2000 and to 5.6 billion by 2030. (appendix, table 4) These numbers are based on U.N. statistics that take into account an optimistic assessment of reduced fertility in the future. The labor force of the LDC's in 1980 stood at 843 million. By the year 2000 this number will nearly double to 1.43 billion and will more than triple by the year 2030, reaching 2.56 billion. (appendix, table 5) In 1980 annual new job requirements for the LDC's stood at 22.7 million. By the year 2000, 37.5 million new jobs will be required annually to satisfy the demand for employment. This number will rise to 41.4 million annually by 2010. Only then will the annual number of new job requirements begin to decline and reach 28 million by the year 2030. (appendix, table 6)

A CLOSER LOOK AT MEXICO

It is impossible to foresee the impact these staggering numbers represent for the future of our relations with the LDC's. But since Mexico, sends the most immigrants to the U.S., it deserves closer scrutiny. I believe that I can speak to this subject with some authority since I have spent the greater part of my career working with development projects in Latin America and Mexico. For example, I lived with the Indians in the highlands of Guatemala and spent three years as the Director of Audiovisual Production for the Colombian Institute of Social Development, a research and development institute in Bogota. I also served for five years with USAID and spent two and a half years as the USAID Population Officer, San Jose, Costa Rica. I recently worked for two years in Mexico in collaboration with the Director of the Mexican Government's population program. Since I know this program first hand I thought it might be useful to summarize the carefully researched data which the Mexicans approved for a film I produced entitled, "Mexico - The Year 2000." This film was reviewed at the highest levels of government so its contents represent the official views of the Lopez Portillo Government. Looking at a country through the eyes of its own people is a good way to understand how they react to the world around them. This film has been shown throughout Mexico on television, in commercial movie theaters and in many rural areas.

Basically, three forces combine to make up the "push" factors that motivate Mexicans to seek work in the United States. The first is the pressure of overpopulation that has created massive migration to Mexico's cities and to the U.S. At the turn of the 20th century Mexico had 14 million people. By 1960 it had more than doubled to 36 million. By 1980 the number had risen to 70 million and taking into account the optimistic fertility decline predicted by the Government, Mexico will count 116 million by the year 2000 and 185 million by 2030. (appendix,table 7) In 1980 the Mexican labor force counted 20.3 million workers. About 40% of it was unemployed or underemployed. By the year 2000 the labor force will have grown by 77% to 35.9 million. By the year 2030 the total number of unemployment rate did not rise that year. During the past 12 months the Mexican economy lost 400,000 jobs which is a staggering blow to those who seek employment. In actual fact Mexico's unemployment grew by more than one million last year.

WORLD'S PROBLEM TOO HUGE FOR U.S. TO SOLVE

At a time when our own country is struggling to provide emergency jobs for Americans, I believe that we must be realistic and understand that there is very little that we can do to change the pressures that create the "push" factors in the LDC's, at least during the next ten to fifteen years. Remember that all the young people who will be looking for jobs by the year 2000 have already been born. Many of them will be ill suited to work because they are being deprived of adequate diet and education.

Charity is one of the finest American character traits but it should first be practiced at home. Our primary obligation is to protect our nation's standard of living by preserving our own natural resources and environment. If the U.S. is forced to provide for more and more people the American dream will suffer immeasurably.

I hope that the information we have provided will move the Senate to pass this bill in the next few months. ###

APPENDIX

TABLE 1: U.S. Population Projections
TABLE 2: Proportion of U.S. Population Growth Due to Immigration
TABLE 3: The Costs and Numbers of U.S. Unemployed Due to Illegal Immigration
TABLE 4: Population Projection for Developing Countries
TABLE 5: Labor Force Projection for Developing Countries
TABLE 6: Annual New Job Requirements for Developing Countries
TABLE 7: Population Projection for Mexico
TABLE 8: Labor Force Projection for Mexico
TABLE 9: Annual New Job Requirements for Mexico

Mexicans in the labor force will be 65.6 million. (appendix, table 8) TEF calculates that the annual new job requirements in 1980 was 651,730. By the year 2000 the annual number of jobs required will be 969,040 and by the year 2030 that number will have risen to 1,066,540. (appendix, table 9)

Mexico exported grain in significant quantities before 1970, since that time it has become a net importer of all the basic foodstuffs: corn for tortillas, wheat for bread, beans and rice as well as soybeans for cooking oil. During a period when Mexico's agricultural production grew by only 15% the demand for these products grew by 50%. In short without huge imports Mexico cannot feed its people.

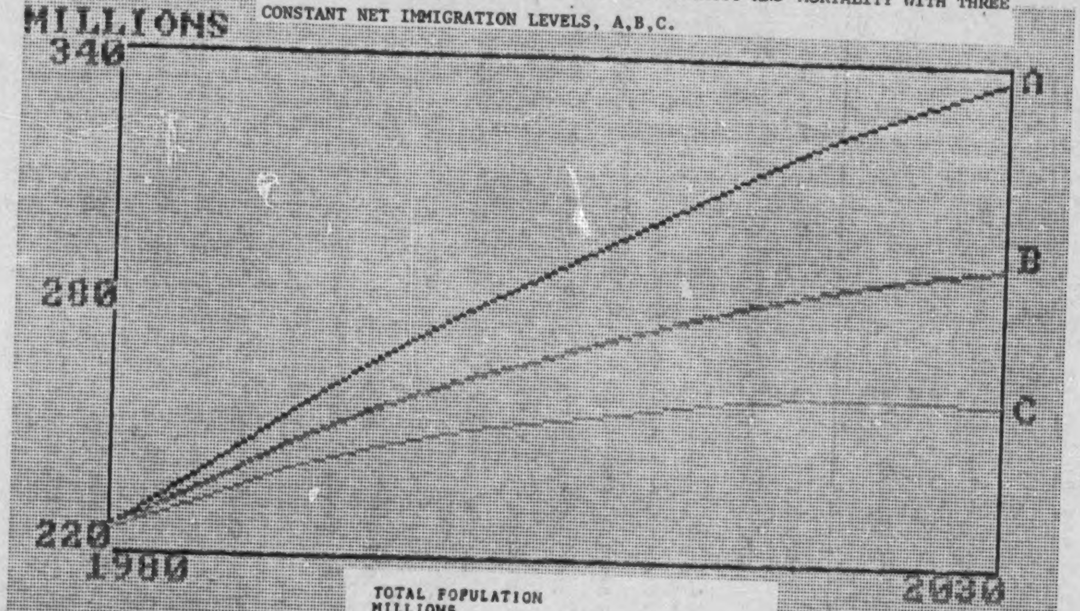
Mexico has discovered a treasure that surpasses even its wildest hopes. But the new petroleum and natural gas industry cannot create many new jobs. There was a time when Mexico thought that mechanized agriculture was the answer, but again agribusiness does not create jobs it eliminates them. In 1978 it cost the equivalent of $8,000 U.S. to create an agricultural job. Today the cost is much higher.

Mexico calculates that it must build 500,000 new houses annually to take care of the growing population that is filling its cities to overflowing. The cost for this was one hundred billion pesos annually in 1978 and has risen much higher today. The task of providing the minimum education for Mexico's growing numbers of young people is staggering. We can get some idea of the proportions of the problem when we realize that half of Mexico's people are children and teenagers below 16 years of age.

Today we read that Mexico's foreign debt totals $80 billion. Approximately $30 billion of this amount is owed to U.S. banks. Since the recent drop in the price of oil there is little hope that Mexico will be able to meet its obligations. In 1980, a very good year, Mexico created just about enough jobs to take care of the people entering the job market. That means that the

TABLE 1

U.S. TOTAL POPULATION ASSUMING 1980 FERTILITY AND MORTALITY WITH THREE CONSTANT NET IMMIGRATION LEVELS, A,B,C.



TOTAL POPULATION
MILLIONS

YEAR	PROJECTION A	PROJECTION B	PROJECTION C
1980	226.51	226.51	226.51
1985	239.81	236.24	233.69
1990	254.26	246.77	241.42
1995	267.26	255.57	247.23
2000	278.91	262.83	251.34
2005	289.72	269.07	254.33
2010	300.55	275.21	257.1
2015	311.13	280.95	259.4
2020	320.9	285.78	260.69
2025	329.43	289.29	260.62
2030	336.44	291.29	259.03

* see notes on following page

A= NET 1.2 MILLION IMMIGRANTS ANNUALLY
B= NET 0.5 MILLION IMMIGRANTS ANNUALLY
C= NET OF 0.0 IMMIGRANTS ANNUALLY

Explanatory notes for table 1

Total U.S. Population (in millions)

Notes: There are three projections (using the cohort-component projection model) based on various assumptions. With the exception of the three different migration levels, all the other demographic variables are kept constant across all three projections. The three primary demographic variables and the data assumptions are as follows:

Fertility is being measured by Total Fertility Rates (TFR = the average number of children that would be born alive to a woman during her lifetime if she were to pass through all her child-bearing years conforming to the age-specific fertility rates of a given year.

QUIC DATA* assumes that for all 50 years the TFR will remain constant at its 1980 level of 1.86.

Mortality is being measured by life expectancy at birth (i.e., an estimate of the average number of additional years a person can expect to live, based on the age-specific death rates for a given year). Since this measure differs signficantly depending on a person's sex, QUIC DATA gives separate life expectancy values for males and females.

Males: 1980 = 69.5 years
2030 72.0 years

Females: 1980 = 77.2 years
2030 = 81.0 years

Migration is being measured in terms of net migration (i.e., the net effect of immigration and emigration of an area's population; this can be expressed as an increase (immigration) or a decrease (emigration)). QUIC DATA assumes that the amount of immigration to this country (i.e., the process of entering one country from another to take up permanent residence) will exceed that of emigration from this country (i.e., the process of leaving one country to take up residence in another one), thus the net effect is an increase.

A = net of 1.2 million immigrants annually (what if current trends continued - close proximity)

B = net of 0.5 million immigrants annually (what if Simpson/Mazzoli bill was passed - close proximity)

C = net of 0 immigrants annually (i.e., the amount of immigration and emigration is equal, thus the net effect is zero)

U.S.-related variables

The following eight variables can be changed; values given are used to run the various U.S. projections if no changes are made.

---

*tm - The Environmental Fund (1982)

1. Total Fertility Rate

   - current value held constant for 50 years (1980-2030) at the 1979 level = 1.856

   source: National Center for Health Statistics (N.C.H.S.)

2. Age-Specific Fertility Rates (or Proportion of All Births to Women in Age Group)

   - current values held constant for 50 years (1980-2030) at the 1979 level

   source: N.C.H.S.

3. Life Expectancy for Males

   - current values increased over the 50 years (1980-2030) = 69.5 in 1980 (based on 1978 data), 72.0 in 2030

   sources: N.C.H.S. and Social Security Administration (S.S.A.)

4. Life Expectancy for Females

   - current values increased over the 50 years (1980-2030) = 77.2 in 1980 (based on 1978 data), 81.0 in 2030

   sources: N.C.H.S. and S.S.A.

5. Annual Number of Legal Immigrants

   - current values held constant for 50 years (1980-2030) = 700,000 for Projection A; 425,000 for Projection B; 0 for Projection C

   sources: Immigration & Naturalization Service (I.N.S.) and QUIC DATA

6. Annual Number of Illegal Immigrants

   - current values held constant for 50 years (1980-2030) = 500,000 for Projection A; 75,000 for Projection B; 0 for Projection C

7. Age Distribution for Legal Immigrants

   - current values held constant for 50 years (1980-2030) at the 1979 level

   source: Population Reference Bureau (P.R.B.)/Leon Bouvier

8. Age Distribution for Illegal Immigrants

   - current values held constant for 50 years (1980-2030) at the 1979 level

   source: Population Reference Bureau/Leon Bouvier

TABLE 2

PROPORTION OF POPULATION GROWTH DUE TO IMMIGRATION, 1980-2030

Year		Projection A*	Projection B**
1980:	RNI***	59%	59%
	Immigration	41	41
1985:	RNI	55	74
	Immigration	45	26
1990:	RNI	52	72
	Immigration	48	28
1995:	RNI	43	64
	Immigration	57	36
2000:	RNI	35	55
	Immigration	65	45
2005:	RNI	30	49
	Immigration	70	51
2010:	RNI	28	46
	Immigration	72	54
2015:	RNI	21	37
	Immigration	79	63
2020:	RNI	8	16
	Immigration	92	84
2025:	RNI	0	0
	Immigration	100	100
2030:	RNI	0	0
	Immigration	100	100

*assumes level of net immigration = 1.2 million immigrants per year

**assumes level of net immigration = 0.5 million immigrants per year

***RNI = rate of natural increase

Source: QUIC DATA projections

QUIC DATA is a trademark of The Environmental Fund.

TABLE 3

TEFdata:

Number 6 September, 1982

THE COSTS AND NUMBERS OF U.S. UNEMPLOYED DUE TO ILLEGAL IMMIGRATION

One of the most vexing issues in the current congressional debate on immigration reform is job displacement by illegal aliens and the resulting costs to the U.S. Treasury in the form of transfer payments (unemployment insurance, food stamps, AFDC payments, and other payments to the U.S. workers displaced.) In other words, to what extent do undocumented aliens take jobs away from U.S. residents in the labor force, and how much does this cost the U.S. taxpayer?

Since nobody knows how many illegal aliens are working here, or what percentage of these workers are displacing U.S. workers (rather than creating new jobs), we can only give a range of estimates. The table below offers three different assumptions as to the number of illegal alien workers, and five assumptions as to the rate at which they displace U.S. workers. One may match any set of these assumptions to see the resulting U.S. unemployment and the corresponding cost for transfer payments.

U.S. UNEMPLOYMENT AND TRANSFER PAYMENTS CAUSED BY ILLEGAL ALIENS

	2 million illegals		4 million illegals		6 million illegals	
Rate:*	Unemployed U.S. Workers	Payments (billions)	Unemployed U.S. Workers	Payments (billions)	Unemployed U.S. Workers	Payments (billions)
10%	200,000	$1.4	400,000	$2.8	600,000	$4.2
30%:	600,000	$4.2	1,200,000	$8.4	1,800,000	$12.6
50%:	1,000,000	$7.0	2,000,000	$14.0	3,000,000	$21.0
65%:	1,300,000	$9.1	2,600,000	$18.2	3,900,000	$27.3
80%:	1,600,000	$11.2	3,200,000	$22.4	4,800,000	$33.6

*Percentage of illegal workers who have taken jobs that would have been filled by U.S. workers.

If, as seems likely, the reality lies somewhere near the mid-range in the table, this means that the loss of control over immigration is costing the U.S. about $14 billion annually and has put 2 million Americans out of work. The number of unemployed is nearly 11 million.

# # # # #

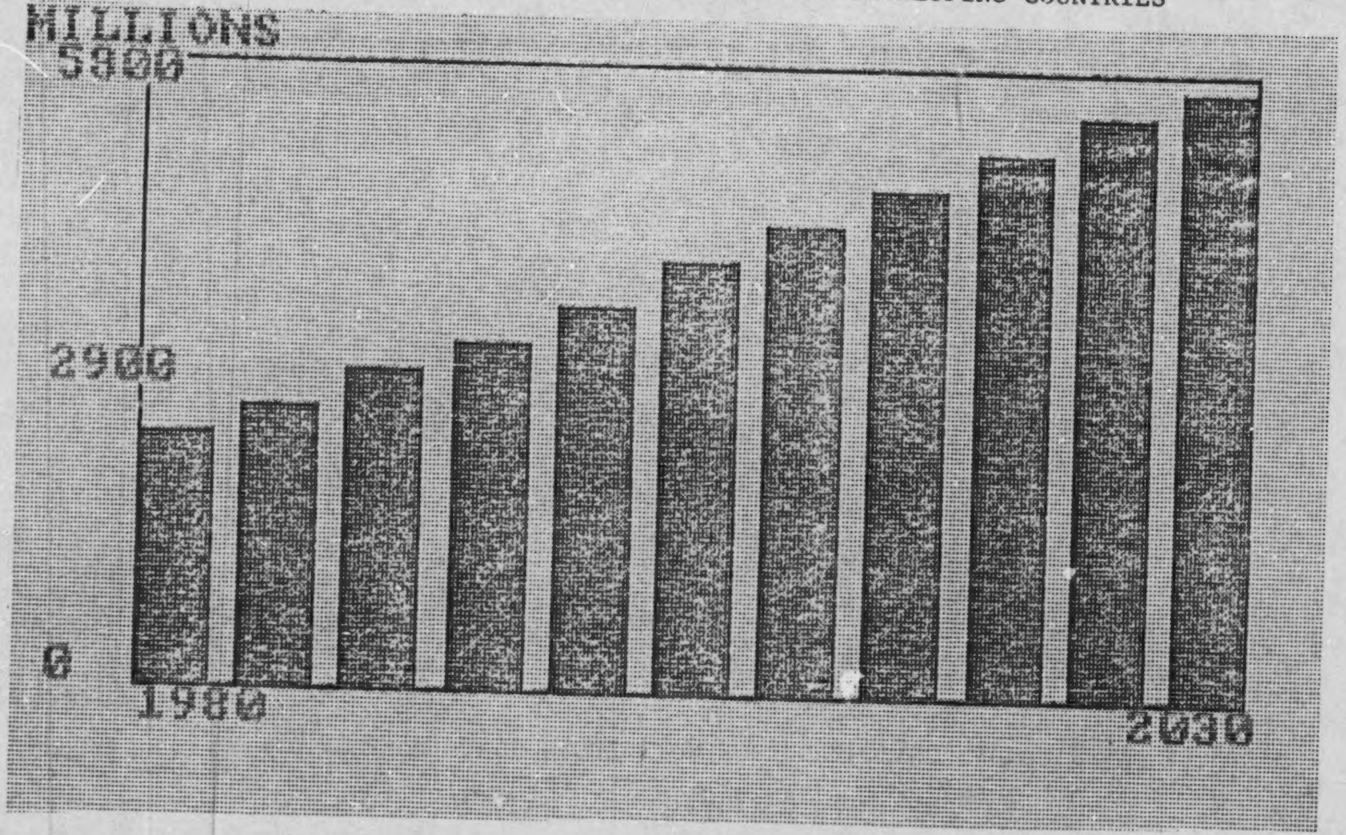
To help educate the public and policymakers, the Environmental Fund has developed a special computer program, "The Impact of Immigration on the U.S. Population" for QUIC DATA, its color graphic computer presentation. For more information contact TEF.*

**tm The Environmental Fund*

THE ENVIRONMENTAL FUND □ 1302 EIGHTEENTH STREET, NW □ WASHINGTON, D.C. 20036 □ 202/293-2548

TABLE 4

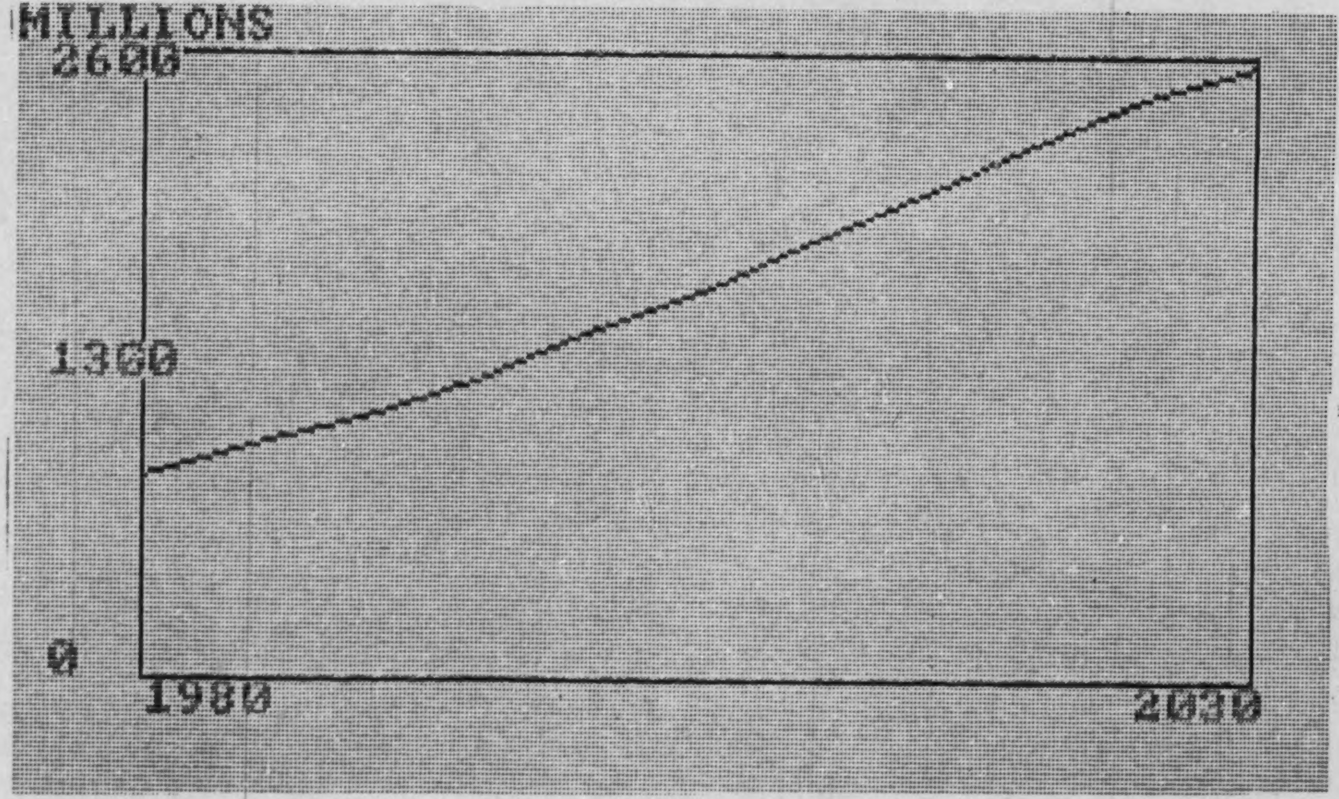
TOTAL POPULATION PROJECTION FOR DEVELOPING COUNTRIES



YEAR	
1980	2310
1985	2600
1990	2910
1995	3240
2000	3590
2005	3940
2010	4300
2015	4660
2020	5010
2025	5350
2030	5600

TABLE 5

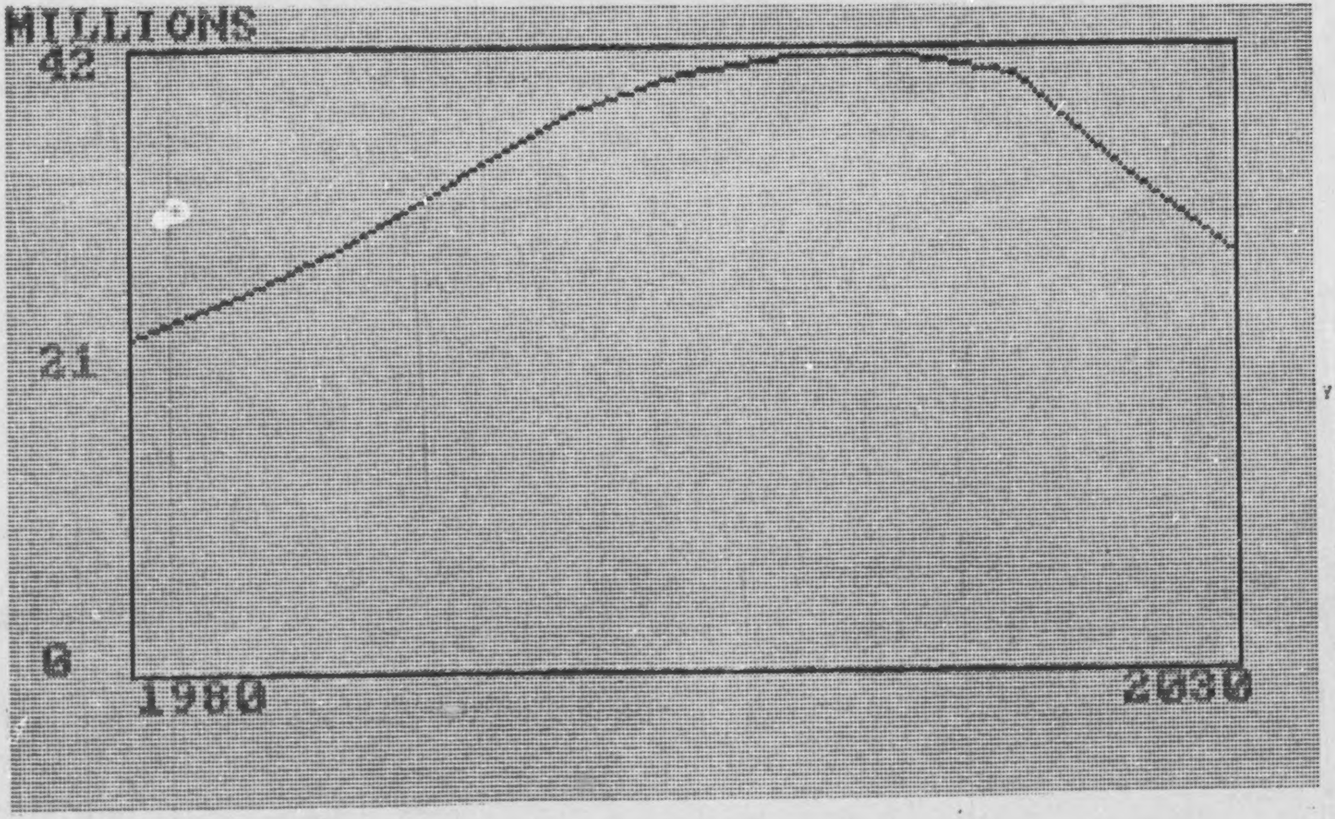
LABOR FORCE PROJECTION FOR DEVELOPING COUNTRIES



YEAR	
1980	843.5
1985	963.33
1990	1095.73
1995	1248.21
2000	1426.34
2005	1618.2
2010	1820.79
2015	2026.31
2020	2228.85
2025	2423.12
2030	2558.86

TABLE 6

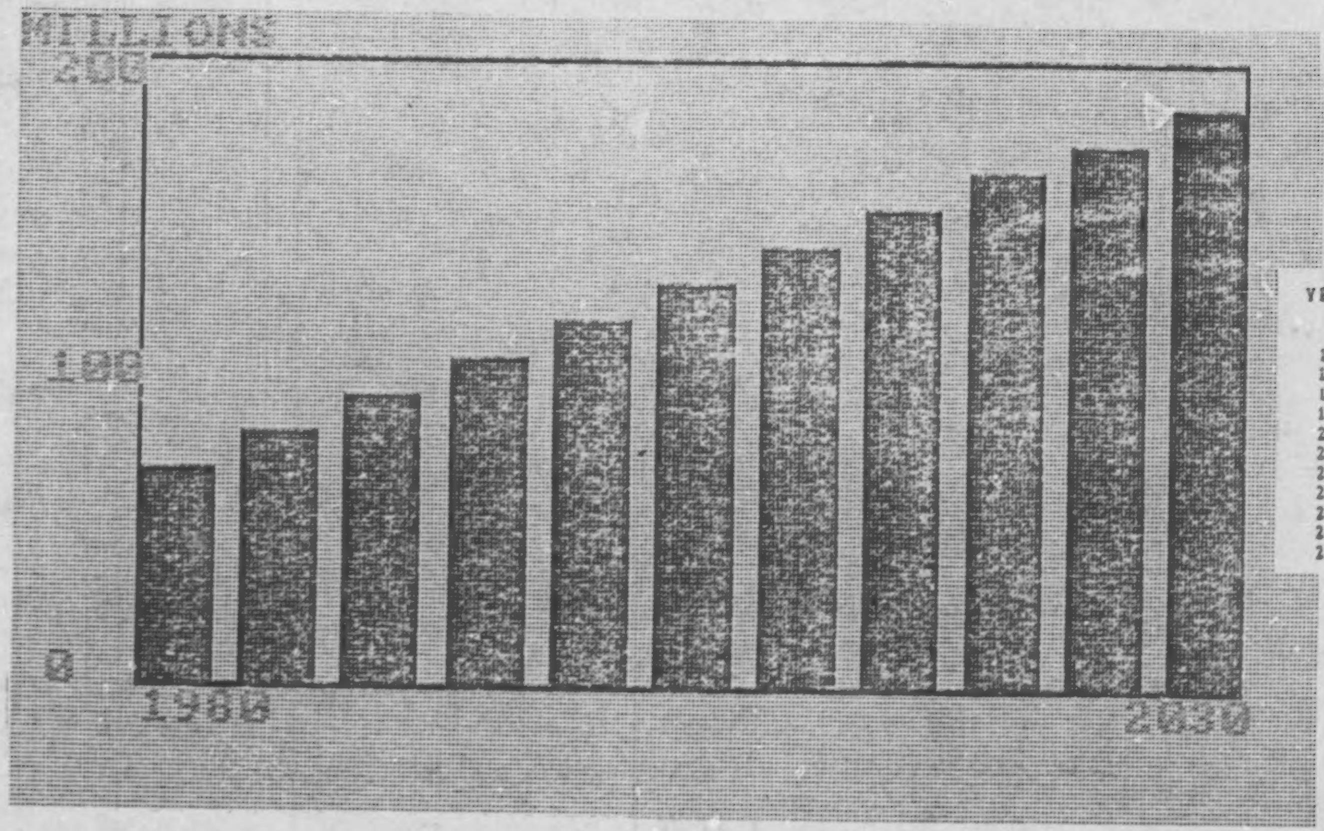
ANNUAL NEW JOB REQUIREMENTS FOR DEVELOPING COUNTRIES



YEAR	
1980	22.72
1985	25.54
1990	28.76
1995	33.35
2000	37.51
2005	40
2010	41.41
2015	41.39
2020	40.22
2025	33.69
2030	28.05

TABLE 7

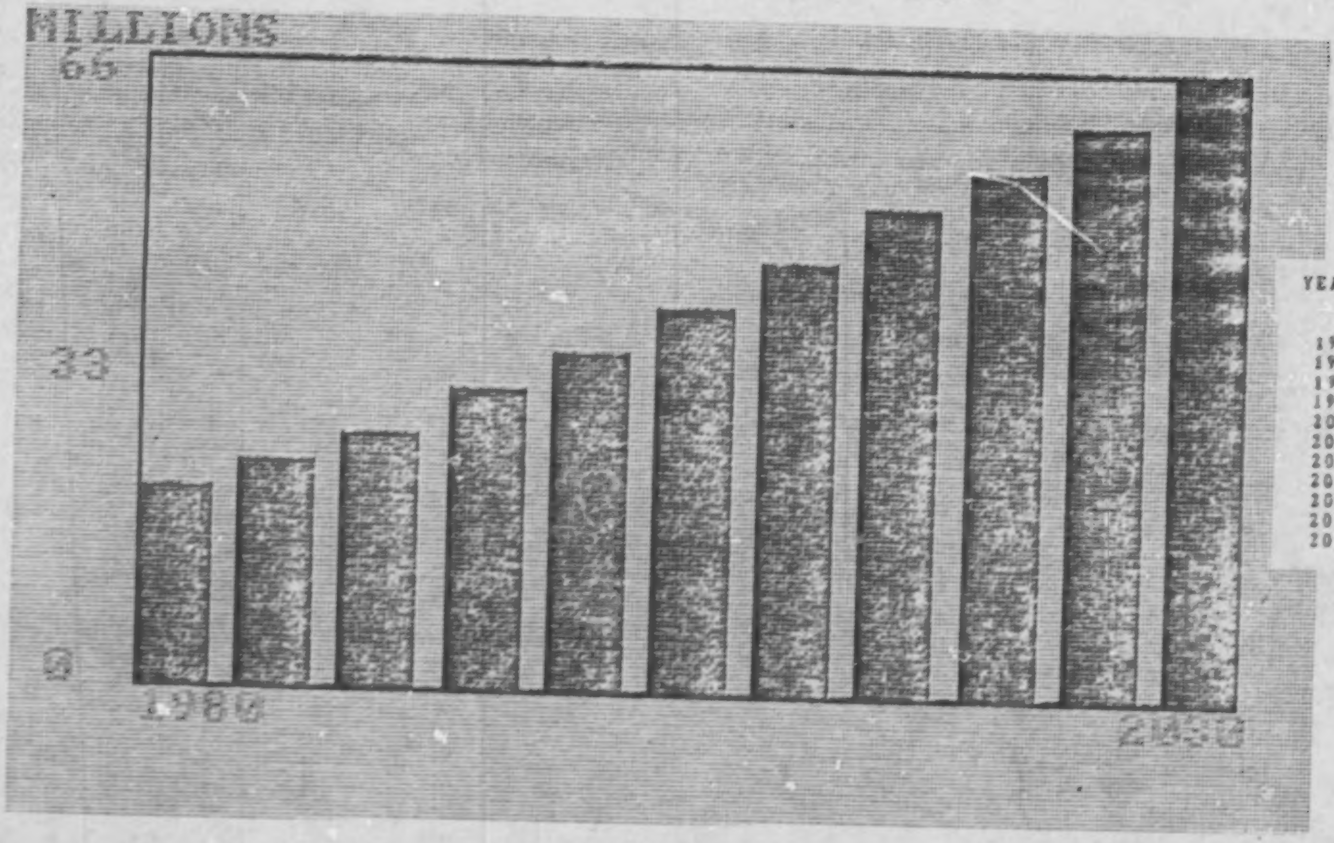
TOTAL POPULATION PROJECTION FOR MEXICO



YEAR	A
1980	70
1985	80
1990	92
1995	104
2000	116
2005	128
2010	140
2015	152
2020	163
2025	174
2030	185

TABLE 8

LABOR FORCE PROJECTION FOR MEXICO



YEAR	
1980	20.28
1985	23.32
1990	27.92
1995	31.25
2000	35.91
2005	40.79
2010	45.72
2015	50.76
2020	55.45
2025	60.48
2030	65.56

TABLE 9

Annual New Job Requirements for Mexico (in thousands)

__Notes__: Annual new job requirements (annual average for a five-year period) are based on the number of people entering the labor force (i.e., those aged 15 years), the labor force participation rate of both males and females, as well as the number of jobs that become available as people leave the labor force either because of death or retirement.

__Source__: United Nations' 1980 medium variant population projections as cited in United Nations, __World Population Prospects as Assessed in 1980__, (ST/ESA/SER.A/78), 1981, Table A-2.

ANNUAL NEW JOB REQ. FOR MEXICO
THOUSANDS

YEAR	
1980	631.73
1985	678.59
1990	803.48
1995	901.74
2000	949.04
2005	997.18
2010	1011.32
2015	988.87
2020	979.6
2025	1021.08
2030	1066.34

Senator SIMPSON. Hyman Bookbinder, please.

STATEMENT OF HYMAN BOOKBINDER

Mr. BOOKBINDER. Mr. Chairman, it is almost a year ago that I testified before the joint Senate-House hearing on pending immigration legislation and paid well-deserved tribute to Senator Simpson and Representative Mazzoli for the pioneering, creative work you started in putting together an immigration package which provided the basis for creating a fair, generous and controlled immigration policy for our Nation. Today, while I express regret that the Congress did not complete action last year on Simpson-Mazzoli, I express too my even greater sense of appreciation of what Messrs. Simpson and Mazzoli have been working so effectively and tirelessly to achieve. Their names, even before the legislation is on the Nation's statute books, have already become widely hailed as historic figures in America's rich history of enlightened immigration policy. As one who has been personally involved for over 30 years in the search for progressive but realistic policies in this sensitive field, I am pleased to note the special contributions made by the chairman.

Now, this issue that we are talking about is not an academic exercise. I think you may be interested to know that last week I spent some time as a member of the President's Holocaust Commission meeting with some organizers of what will be a gathering of Holocaust survivors in America. In about 6 or 7 weeks, this town will have 10,000 visitors, survivors of the Holocaust. I am pleased to tell you that they have decided that their key theme, the opening theme, will be "Thank You America." Thank you for welcoming us. Thank you for making it possible for us to restore our lives. Thank you for making it possible for us to contribute to America's culture, America's economy, America's society. So it should be of no surprise to anybody that an organization like the American Jewish Committee maintain a deep, abiding interest in the development of our Nation's immigration and refugee policy over the years.

In the 75 years of our existence, we have sought policies that would reunite families; that would provide vigorous efforts to rescue and provide haven for refugees; and firm, but fair, enforcement of our immigration laws.

For these reasons, we welcomed the Senate's passage last year of the Immigration Reform and Control Act. We did so even though we remained and still remain neutral on the issue of employer sanctions and had reservations about several other provisions. But, taken as a whole, we believe that the act represented a major advance over previously submitted measures. One of the great strengths of the act, of course, was, like I said, recognition that refugee rescue was a unique segment of immigration policy and it ought to be considered as a separate strand of admissions to the United States. In leaving refugees out of its proposed cap, the legislation acknowledges that we require flexible procedures in order to allow us to make humanitarian responses to politically forced migration in a quick and generous fashion.

Another positive feature of the act is that it recognizes the beneficial effects of present levels of legal immigration for the United States, and, therefore, does not seek to reduce this flow.

We do not believe, however, that it is necessary or wise or justified to place a cap on regular-flow admissions, as contained in the measure approved by the Senate last year.

And my full statement, which I hope you will include in the record, will elaborate on this point.

In our view, the elimination of a cap, as provided for in the House Judiciary Committee's recommendations would not only not add significantly to levels of entry, but would also serve to further the aim of this legislation with respect to preserving the beneficial effects of continued generous and predictable numbers of legal immigrants.

We support the act's reliance upon family reunification as the principal organizing principle in determining preferences for entry. That is why we favor the maintenance of the current second and fifth preference categories.

With respect to the second preference, we are gratified that the Senate, in its action last year, saw fit to allow continued entry of spouses and minor children of permanent resident aliens.

With respect to the fifth preference, which provides entry visas for brothers and sisters of U.S. citizens, we oppose its elimination. Of course, the present problem in the United States, especially in recent years, is how to deal with mass flows of asylum seekers in a fashion that honors our responsibilities to genuine refugees and still allows us a degree of control over admissions. The act contains a number of positive proposals, but it also contains some weaknesses.

We welcome as positive the proposals to appoint specially trained administrative law judges to hear asylum cases, and to provide for appeals of their decisions to a new Immigration Board.

Much less attractive is the bill's provision for summary exclusion of aliens who enter without documents and do not make immediate requests for asylum.

Finally, several of the act's proposals are designed to formulate a workable and equitable approach to reducing the flow of undocumented aliens into the United States, and to treat in a fair and humane manner the undocumented population now in the United States.

In our statement, we refer to the amnesty provisions but because of the time problem, I just want to say that we believe that coupled with enforcement measures, a legalization program should be enacted which contains a cutoff date or dates as close as possible to the time when these provisions become law.

We believe if some of these concerns are addressed as the act is being considered, we will indeed have gone a long way toward creating a fair, generous, and controlled immigration policy for the United States.

Thank you.

Senator SIMPSON. Thank you very much. I always appreciate hearing your views indeed.

[The prepared statement of Hyman Bookbinder follows:]

PREPARED STATEMENT OF HYMAN BOOKBINDER

Almost a year ago, I testified before a joint Senate-House hearing on pending immigration legislation and paid well-deserved tribute to Senator Simpson and Representative Mazzoli for the pioneering, creative work they had started in putting together an immigration package which provided the basis for creating a fair, generous and controlled immigration policy for our nation. Today, while I express regret that the Congress did not complete action last year on Simpson-Mazzoli, I express too my even greater sense of appreciation of what Messrs. Simpson and Mazzoli have been working so effectively and tirelessly to achieve. Their names, even before the legislation is on the nation's statute books, have already become widely hailed as historic figures in America's rich history of enlightened immigration policy. As one who has been personally involved for over 30 years in the search for progressive but realistic policies in this sensitive field, I am pleased to note the important contributions made by the Chairman of this subcommittee.

Since its founding in 1906, the American Jewish Committee has maintained a deep and abiding interest in the development of our nation's immigration and refugee policies. We have followed closely and participated actively in discussions of every major proposal to revise our nation's admissions statutes that has been offered during the past three-quarters of a century. Throughout, we have advocated generous provisions for regular flow entry, especially for the purpose of reunifying families; vigorous efforts to rescue and provide safe haven for refugees; and firm, but fair, enforcement of our immigration laws.

For these reasons, we welcomed the Senate's passage last year of the Immigration Reform and Control Act. We did so even though we remained and still remain neutral on the issue of employer sanctions, and had reservations about several other provisions. Taken as a whole, however, we believe that the Act represented a major advance over previously submitted measures. Equally, we believe that the Senate's action constitutes a significant contribution to the process of adjusting our laws so that we may continue, in an orderly and humane fashion, to maintain our nation's traditions of welcoming immigrants who seek to join their destinies with those of the American people.

In particular, we commend this Subcommittee and the full Senate for the recognition and agreement that there are three distinct streams which, in combination, comprise the total numbers of newcomers who enter our nation each year. Those three streams are: refugees; regular-flow immigrants, who enter according to established legal procedures; and undocumented aliens, who enter outside of those established legal procedures. Given that the measure under consideration today contains provisions which address each of these major components of our immigration stream, it successfully expresses its initiators' intent to provide our country with a comprehensive admissions policy.

During the 97th Congress, the House of Representatives also gave preliminary consideration to a similar measure, sponsored and introduced by Congressman Romano Mazzoli. While that body was unable to complete action on the legislation before the session adjourned, we believe that the bill reported to the House by its Committee on the Judiciary's Subcommittee on Immigration, Refugees and International Law, under the Chairmanship of Congressman Peter Rodino, contained a number of positive changes in the basic proposal which are worthy of being incorporated into the bill this Subcommittee is now considering.

Refugees

One of the great strengths of this Act is its recognition that refugee rescue is a unique segment of immigration policy and that it ought to be considered as a separate strand of admissions to the United States. In leaving refugees out of its proposed cap, the legislation acknowledges that we require flexible procedures in order to allow us to make humanitarian response to politically forced migration in a quick and generous fashion.

In previous testimony before this Subcommittee, the American Jewish Committee endorsed this affirmation of the special character of refugee rescue efforts. We are heartened to note that the Senate sustained this provision when its members voted on the measure during the previous Congress. We sincerely hope that the Senate will do so again during this session.

Regular-Flow Admissions Numbers

Another positive feature of the Act is that it recognizes the beneficial effects of present levels of legal immigration for the United States, and therefore does not seek to reduce this flow.

We do not believe, however, that it is necessary to place a cap on regular-flow admissions, as contained in the measure approved by the Senate last year. While the number of immediate relatives of U.S. citizens, a category of entrants which is exempt from numerical ceilings under present law, has been growing slowly in recent years, we believe that this rise is mild and predictable, and lends itself to planning efforts to deal with it. Moreover, these newcomers, like those who enter through the limited-preference categories, come to join relatives in the United States or to take advantage of job offers. Thus, they are aided by their families or employers in making a quick and positive adjustment to their new environment. Therefore, contrary to the fears expressed concerning other streams of inflow, current family immigration takes place within a context of built-in support systems which make this flow manageable.

A cap would present a number of additional problems were it enacted. Since immediate relatives of U.S. citizens would get first choice for all available admission places, their numbers would take up many of the 350,000 family preference visas (within the total 425,000 immigration admission ceiling) provided for in the measure approved by the Senate during the last session. The result would be to leave an inadequate number of visas that could be utilized for purposes of other types of family reunification. This, in turn, would further increase the already large backlogs in the limited preference categories.

In our view, therefore, the elimination of a cap, as provided for in the House Judiciary Committee's recommendations regarding this bill, would not only not add significantly to levels of entry, but would also serve to further the aim of this legislation with respect to preserving the beneficial effects of continued generous and predictable numbers of legal immigrants.

In addition, we continue to support a provision in the initial version of the Act that provided for the doubling of admissions quotas for Mexico and Canada, to 40,000 visas each, as an additional class of entry slots that would not be charged against the overall ceiling for annual entry. We believe that this addition would help us to relieve some of the demand for immigration from our contiguous neighboring nations; give credibility to other measures designed to control illegal entry from these areas; all without taking places away from prospective immigrants from other locations.

Preferences

We support the Act's reliance upon family unification as the principal organizing principle in determining preferences for entry. To continue this emphasis on family is, we believe, both humanitarian and socially beneficial, since it guarantees that newcomers will be received by relatives who will aid them through the transition period of adjusting and integrating into American society.

For these reasons, we favor the maintenance of the current second and fifth preference categories.

With respect to the second preference, we are gratified that the Senate, in its action last year concerning this provision, saw fit to allow continued entry of spouses and minor children of permanent resident aliens. However, if family reunification is truly to be a guiding principle of our immigration policy, we believe that it is inconsistent to deny, as that measure did, second preference visas to unmarried adult sons and daughters.

With respect to the fifth preference, which provides entry visas for brothers and sisters of U.S. citizens, we oppose its elimination. Retention of this preference will preserve immigration places for relatives who are considered extremely close family members in many of the cultures currently represented in our entry streams. In addition, since significant flows of siblings tend to come from specific countries, continuity in this channel for entry will guarantee diversity in our sources of newcomers and will preserve the universal character of our nation's admissions policy. The resulting pluralism will benefit our country greatly.

Finally, we wish to note that changes in these preferences as currently structured might transmit unintended signals concerning our Nation's continued commitment to internationally recognized standards of human rights observance and humanitarian obligations expressed in the Helsinki Final Act of 1975. In that document, the signatory nations, of which the United States of course is one, agreed to "deal in a positive and humanitarian spirit with the applications of persons who wish to be reunited with members of their family." While the Final Act does not contain a common definition of the term "family," for the purpose of encouraging more liberal emigration policies in the Soviet Union and Warsaw Pact nations, our Nation, along with our Western allies, has interpreted the term in a very broad sense to include siblings and adult sons and daughters, as well as grandparents, aunts, uncles and even cousins. To the degree that modifications are made in the second and fifth visa preference categories, such changes will run counter to the letter and spirit of the Helsinki Final Act.

Asylum

A pressing problem that the United States has faced in recent years has been how to deal with mass flows of asylum seekers in a fashion that honors our responsibilities to genuine refugees and still allows us a degree of control over admissions. In addressing these questions, the Act contains some positive proposals. It also contains some weaknesses.

We welcome as positive the proposals to appoint specially trained administrative law judges to hear asylum cases, and to provide for appeals of their decisions to a new U.S. Immigration Board. A key feature of this system is that it would be independent, outside of the Immigration and Naturalization Service and not subject to the Attorney General's review. Since USIB members would be appointed to six-year terms by the President, with the Senate's consent, their tenure in office will overlap that of the administration that appoints them. All of these provisions will serve to guarantee the independence necessary to assure the credibility of the system.

Much less attractive is the bill's provision for summary exclusion of aliens who enter without documents and do not make immediate requests for asylum. First, many of the people who might be subject to this procedure might have legitimate grounds for seeking asylum, but they may be insufficiently familiar with the formal procedures set forth in the Act governing requests for asylum. Second, the concept of summary procedures may open the door to abuses against guarantees of due process and fair hearings. We make positive note that the measure reported last year by the House Committee on the Judiciary addresses these concerns by providing, in similar circumstances, that an immigration officer inform an alien of the right to request a hearing before an administrative law judge for a redetermination of a judgment of summary exclusion.

Amnesty and Legalization

Finally, several of the Act's proposals are designed to formulate a workable and equitable approach to reducing the flow of undocumented aliens into the United States, and to treat in a fair and humane manner the undocumented population now in the United States.

One of these proposals would offer amnesty to undocumented aliens who entered the country illegally prior to certain dates. Those who entered before January 1, 1977 would be granted permanent residence status, and those who entered before January 1, 1980 would be granted temporary residence status. We support the basic intent of these proposals as being generous and constructive. They will obviate the prospect of large-scale deportations, with their consequent disruptions for the communities and industries in which many of these aliens have successfully integrated themselves since entering the country. Moreover, they will allow us to concentrate enforcement resources more effectively upon persons who have entered the country illegally after the amnesty dates adopted.

We must also pay close attention to the date of enactment of this legislation. The longer the Act is under consideration, the further will be its enactment from the proposed 1977 and 1980 cut-off dates for eligibility for legalization. The greater the lapse of time between these dates, the larger will become the segment of the undocumented population unable to legitimize its status. As that segment grows, the effectiveness of this proposal will diminish. Therefore, we believe that, coupled with enforcement measures, a legalization program should be enacted which contains a cutoff date or dates as close as possible to the time when these provisions become law.

Conclusion

The American Jewish Committee endorses many of the provisions contained in the proposed Immigration Reform and Control Act. We also have some serious reservations concerning certain aspects of the bill, and we have attempted to address our reservations with recommendations. We believe that if these concerns are addressed as the Act is being considered, we will indeed have gone a long way toward creating a fair, generous, and controlled immigration policy for the United States.

Senator SIMPSON. Just several questions and we will conclude today.

I would ask, Mr. de Haan, could you comment on how much independence private voluntary organizations would need from the Government in order to effectively carry out their role in the legalization program?

Mr. DE HAAN. Senator, in some ways it is difficult to define unless we can get down to concrete things applying to the program.

I think, for example, and all the agencies agree, that we do not want INS officers on the premises of the program, this kind of thing. We, obviously, have accountabilities under any Government program, but it is accountability rather than monitoring. And it gets to the question of presence and the question of whether or not we adjudicate, for example, and the INS would then second-guess us on something, this kind of thing.

We do not want to adjudicate. We want to be of service, but we do not want to be an enforcement arm of Government.

Senator SIMPSON. I understand. Many of the voluntary agencies currently provide legal representation to illegal immigrants in their effort to avoid deportation. That is a very important part of your role.

Mr. DE HAAN. Right.

Senator SIMPSON. Under the legalization program, the Federal Government, I envision, would be providing funding to the voluntary agencies to assist in the process.

Mr. DE HAAN. Right.

Senator SIMPSON. Now, if those claims were denied in certain instances, what would then prevent the voluntary agency from turning then to, say, bring an action against the Federal Government on behalf of those aliens?

Mr. DE HAAN. Well, we would like to be in a position, as we have been for decades, of being advocates on behalf of disadvantaged people, in this context, illegal aliens or undocumented refugees, what have you. I think that role is an important one. And I think we should be permitted to continue that even though we are helping to implement a Government program.

Senator SIMPSON. How do you respond to those that say or who assert that a significantly more recent legalization date would serve simply to reduce further illegal immigration?

Mr. DE HAAN. Well, I know this may be a problem. But this issue has been around for so many years, the issue of undocumented aliens, at least 12 or 13 years or more, and I have always felt and have become convinced more and more over the years that we cannot do a half-baked kind of thing. I think it is important that we have a current date, and that we be generous in the application of this date, that we are simple in the procedures, and if a few more do trickle in because of the expectation, obviously we have to take the risk. Equity and justice and compassion, are important in trying to solve the problem, we are legislating for a generation here. And I think we have to put it in that kind of perspective.

Senator SIMPSON. That is one that I would like to put it in. We are legislating for generations ahead, but every single obstruction in the path is a short-term one, selfish short-term objections without fail, every single one I have found in most ways is a short term let us not do that, do this, or let us not deal with that right now, or we need off the hook. I have never seen an issue which had more of the ole boy, more power to you, but, issue, and that is it, because we do in our gut and in our head want to do something for the long term, but it is difficult to get over the short term and very real objections, concerns, and so on.

I want to ask one question: You have in your testimony a comment regarding children, which was an interesting amendment.

The thing that would limit employer sanctions to those employers, I believe, who have violated the minimum wage or hour laws, or displayed a pattern or practice of hiring illegal aliens. Now, if employer sanctions were limited only to those employers who violate minimum wage laws and hire illegal aliens, would not the sanctions be largely ineffective against those employers who would pay the minimum wage and still hire the undocumented?

Mr. DE HAAN. Mr. Chairman, I think on the question of sanctions, our primary concern here, from the viewpoint of the National Council of Churches, is possible discrimination. We are very concerned about the implications, the impact of sanctions in this regard. I think in the statement we have tried to suggest that the committee pursue perhaps other alternatives, including the targeted sanctions along the lines of the amendment which you mentioned. Or the other way could be on the sunset provision, in which the whole thing could be reappraised in 3 years, 5 years, or something.

I think this is a new area of law in terms of immigration. It is something that everybody is a little bit jittery about, and it is something that ought to have some kind of parameter around it so it can be reviewed. In administrative terms, sanctions should not be onerous. Maybe it is a question of applying the civil rights kind of thing where you cite for violations and pursue it in that context.

Senator SIMPSON. Certainly, whatever we do in regard to legalization, which is a very critically important part of it, voluntary agencies are going to be very deeply involved.

Mr. DE HAAN. Right.

Senator SIMPSON. And you know that both Ron Mazzoli and I, hopefully, have alerted the voluntary agencies to some of the things that have caused us concern and, you, as a responsible member of that group, and others who have seen what we are saying and I think making changes receiving those comments in the spirit in which they were intended, but you are a very important part of it, to be sure, and will be.

Mr. McMahon, I have a couple questions. Your very direct comments and testimony, let me ask if there is an ideal U.S. growth rate; what is that and what should Immigration's role be in that?

Mr. McMAHON. Are you asking me?

Senator SIMPSON. Yes.

Mr. McMAHON. Well, our feeling is——

Senator SIMPSON. You were looking at him and wondering why I was asking him that question.

Mr. McMAHON. The ideal U.S. growth rate is a growth rate that would keep our population size within the requirements of a good economy. Right now I think the high level of unemployment that we have in this country indicates that we should look seriously at the ceilings we put on immigration legislation, and make it relative to our natural resource base and also the state of the economy in the United States. And, therefore, we think that periodic review of the ceiling on legal immigration is necessary and that a mechanism should be developed over the next several years to begin to measure these kinds of things.

The U.S. Government, unfortunately, right now is totally incapable of making an assessment. The Environmental Fund, in order to address these issues, is also involved in producing material that will help other committees that are interested in foresight capabilities; that is, to take a look at the future and see what it portends for the United States.

I would like to make one comment, if I could, on the equity question. When I worked in Mexico, the question of equity was a problem for me. Every day in front of the Mexican Embassy in Mexico City there are huge long lines of thousands of people waiting to get on the register to come into the United States legally. And some of my friends would come up to me and say, "Why is it that the United States has a long waiting list of people that want to come in and observe your laws and, yet, allows the situation to continue with illegal immigration?" I think we are sending messages to these people that it is much more advantageous not to bother with the law, but just to break it and achieve your objectives. And I think this is a very poor message that we are sending around the world and, obviously, this committee has done a wonderful job trying to change this situation.

When we think about equity, think about people who want to come here and follow our laws.

Senator SIMPSON. In line with that then, let me ask you, I know your group opposes the legalization program, and my question then is what are we to do about the fearful subculture of human beings afraid to go to the police, afraid to go to the hospital unless it is for a birth, afraid to go to their employer because of expulsion, and subject to true exploitation not only in employment but housing and other areas, and my pragmatic reference if you could not find them coming in, how in the hell are you going to find them to get them out?

Mr. McMahon. This is the situation we feel very strongly about. Of course, you want to be just to the people who have been here for a long time, and we would like the committee to take a look—and I put this in my written testimony, I didn't speak to it today, take a look at a system whereby you could change the registry date from 1948 to, say, 1974.

There is a mechanism now to legalize people who have been in the United States for a long enough time and have truly established themselves in the community, but they are not very recent arrivals. We also feel that if employer sanctions function the way everybody hopes they will, that over time, the employer sanctions provisions would self-select people when they change jobs. Since they would not be able to get another job, they would begin to go back to the countries from which they came.

Remember, that a large percentage of illegal aliens that are in this country go back and forth. There is a two-way flow. Many people come to this country and then return home, come again and maybe on the third or fourth time, decide to stay permanently. We think that well-enforced employer sanctions would do much to have people go back to their own countries of their own volition, because they would not be able to get another job here. And, of course, I do not know if this system would be less destructive than amnesty, but we are very concerned that the amnesty provision, as provided in the bill, would encourage many more illegals to come in right away. It would encourage the fraudulent document mills to spew out a tremendous number of false documents and it would be very difficult to enforce an amnesty settlement.

We are very aware of the fact that this is a humanitarian problem. It is a problem of trying to be fair, and very difficult; there is no doubt about it.

Senator Simpson. That is a helpful answer, and a thoughtful one, because it is a tough, tough area. Where are we with regard to those persons, rewarding illegality and, yet, removing them from society, bringing them forward, letting them come forward, giving them a hand to come forward?

Just in your population, and I think the Select Commission was stunned, and I know the groups I have been working with have all been stunned, there is no population policy in the United States. None. It just is not there. So, in making your projections that you use, immigration contribution to population growth, what do you take into account with regard to emigration from the United States?

Mr. McMahon. That is a very good question. I wish we had the figures. One of the things we are trying to do in our other activities at the fund is to encourage the Congress and the U.S. Government to get a better handle on keeping statistics. The United States right now has no data on the number of people that leave, no accurate data. In our estimates when we make our projections, we use the number of about 100,000 a year. However, all the numbers we use in making our projections are net immigration numbers. In other words, we take into consideration the flow of legal immigrants and an estimate for illegals, and we use a range there because nobody knows the exact numbers. We use net numbers so they do balance out.

Senator SIMPSON. I was interested in your comment. I will not get into a question, but the issue of the root causes of illegal migration, that is one that could have absolutely stalled all the processes of the Select Commission, all processes of this committee and all the processes of the House committee——

Mr. MCMAHON. Exactly.

Senator SIMPSON. It is no longer time to go back to more papers on root causes, because we are here.

Mr. MCMAHON. Exactly.

Senator SIMPSON. Thank you.

Mr. Bookbinder, just a couple questions.

Given the increase, and I know your deep feeling is very real, and why should it not be in some of the things you just related that make it even more real and long lasting, and that is the issue of limiting legal immigration. But, given the increase in the last 10 years in the immediate relative category, it has almost doubled. Given the generous legalization provisions in this legislation, which will increase demands extraordinarily for family reunification, that is why we tilted the second preference when we were toying with the fifth. Why should the United States not enforce a strict limit on the number of people it allows to immigrate each year?

Mr. BOOKBINDER. In some respects, there is a limit. We are talking about the immediate family.

Senator SIMPSON. There is no limit there.

Mr. BOOKBINDER. There is no limit, but if you place a cap on that plus the others, you are not limiting immediate families, but you are making it extremely difficult to have the kind of generosity, the compassionate kind of understanding that we have had in the past for the other preference categories. So the numbers do not scare us. They really do not scare us the way they seem to be scaring some.

You cite the doubling over the last few years. I think those numbers require a good deal of analysis. The statistics for the period 5 or 10 years ago, I understand from the experts in this field, require some adjustment. But for the last 4 years, we have been just at about the same level, roughly 140,000 or 150,000. It is predictable. There will be a bump in the years ahead as the legalization program comes through. We ought to be prepared for that. We ought to know that. But overall, the numbers ought not to frighten people. A country that ought to be confident and feel comfortable about the fact that we will sooner or later be out of its economic recession. This country can afford, can absorb a reasonable number of people, and we are still talking about reasonable numbers. We are simply not talking about millions. I think it is unfortunate that so much attention and so much finger-pointing has taken place in the last 2 years, pointing to 1980, a very, very unusual year. This country, once every now and then may have to face a special critical situation like that. We are talking about several hundred thousand. I would like to put it this way, Mr. Chairman: To put it down to simple numbers, if there is a community of 200 people, a society of 200 people, and 1 person comes to join that community of 200 each year or 2 anybody really think that a group of 200 cannot easily absorb two new people? And that is what we are talking about in terms of percentages or proportions. And I just think that questions like yours, and I do not object to the question, Mr. Chairman, because that is a question being brought up constantly, questions like that reflect, I must say with deep regret, a lack of confidence in the country's ability to grow and absorb.

Senator SIMPSON. It is an interesting issue because even when we discuss a cap in connection with this bill, they really do not seem to be aware that we are not placing a limit on immediate family under this legislation. Even with the cap, we provide for a reassessment in the future when the bump has gone on, but there is still no limit under the proposed legislation for immediate family. And I think people are unaware sometimes, not any of you in this room, that we have no limitation at all on immediate family in the United States, in the preference system and whatever is over that under those areas, immediate family are not there. And with the legalization of however many come forward and, say, in permanent resident status are entitled to have spouse and the children, you are going to have, I think, an extraordinary, at least a bit of a strain on the family situation. And then your example of 200 accepting 2 is very valid.

The other example is of a person who from another country defines a nuclear family as being adult brothers and sisters and so on and one person can make application for 68 is a different situation and a very real and documented fact. So, you see it is the grapple that we do.

Mr. BOOKBINDER. I understand that. Could I ask you, Mr. Chairman?

Senator SIMPSON. Sure.

Mr. BOOKBINDER. What are the highest estimates being relayed to you by your experts as to the cap—what is the worst possible scenario you see for the years ahead? What is it that we are afraid of?

Senator SIMPSON. I try not to live in fear with this issue, or I would not be affected at all. I do not have a fear. I think we can assimilate and bring in millions in the years to come, but I do say that the concern has got to be the issue of the illegal, undocumented persons in the underground status, locked away from the rest of the systems in this country, and that type of thing. And I think we have to define nuclear family under our own laws in the United States of America, and not define it as it would be defined in some other country. And then I do say that, indeed, if in legalization millions come forward, and we hope they do, that is the hope of this legislation that they do come forward and get on the track toward citizenship. Then, indeed, once they do come on the track, they open the door for immediate family and eventual family reunification, and those are big numbers, whatever they are. But they are not frightening to me. They are big numbers. And the things that are stated by Mr. McMahon are very real and I do not like to play with those. When we announced the position of the Select Commission, we had a great press conference to do so, all we came away with was numbers. And it is unfortunate because we never wanted to play with numbers; and I do not either. But you are asking the wrong guy for the worst case because I am not a fearful person.

Mr. **Bookbinder**. I am sorry I put it that way. I did not mean that you are afraid. I want to make the point that this country has shown generosity in the past. We have not suffered from the generosity.

At this moment, all I mean to do is say that as you give this consideration, give it the most sympathetic, generous consideration. And while you express the hope that you are going to pass a law for generations to come, the Congress is going to be in business for a long time. It can always take a look at what in future years it considers to have been an omission. I think it will never have to say that to itself, but it can say that in the future.

Senator **Simpson**. I think I join you in sending the signal to the international community that we are continuing our commitment to family reunification. And we do not just talk about it, we put our money where our mouth is. We take in more people for the purpose of family reunification in this Nation than any other country in the world, and probably more than all the other countries of the world combined.

Mr. **Bookbinder**. It is one of the most prideful things about our American existence. This is the one country in the world where all the families want to come, and I say hurray for America.

Mr. **McMahon**. Mr. Chairman, may I make one comment?

Senator **Simpson**. Yes.

Mr. **McMahon**. I would just like to say that I did a little calculation as we went along. The example that you used has to be looked at in terms of a form of compound interest.

You say numbers are not important. But when you put money in the bank, you really want to get high interest rates. Well, it turns out that the formula that you used for calculating population projections is the same basic formula you use for interest. In the example that you used it does not seem to make too much difference if you have a community of 200 people and 2 people come in. It does not seem too much the first year. But when we realize that within 70 years that population of 200 million people will double and have grown to 460 million people? In the long term, which is what the Environmental Fund is interested in, I do not know if the United States would be a better place. Would we have our freedoms and so forth, if 70 years from now, when your grandchildren, if you have any, are living in this country had almost 500 million people? Those are the simple mathematical facts. Unfortunately, we have to face up to them.

Senator **Simpson**. I am going to have you and Hyman visit in the hallway. [Laughter.]

Mr. **Bookbinder**. I have two grandchildren, and I hope they will make their contribution to America also.

Senator **Simpson**. I think we have to have a policy that the American people can support or we will be in danger of losing that very generous position that you and I and all of us really embrace.

Mr. **Bookbinder**. It is just where do we place the compromise?

Senator **Simpson**. Thank you very much for your testimony. It is very helpful to us. We will take up tomorrow at 10 a.m.

If you will wait just a moment, please, I just want to acknowledge the assistance of the staff. I will do that now rather than at the end of the hearing next week. Dick Day, I appreciate his assistance. Donna Alvarado, Betsey Greenwood, counsel to the subcommittee; Tina Jones, Carl Hampe, intern; Molly Duncan, the office crew, the staff members of various members of the subcommittee——

Let me have your attention, please. I will babble a little bit further and then you can go home.

We are going to have a hearing tomorrow and we will have a hearing Monday. We will have a hearing March 7, at which Lane Kirkland and others will testify covering the full spectrum of the issue and tend to go to markup in mid-March and on with the bill to the full committee in March and, hopefully, on the floor for consideration in April. That is our timetable in our effort to consider every amendment along the line.

Thank you very much. That concludes the hearing.

[Whereupon, at 3:45 p.m., the hearing was concluded.]

IMMIGRATION REFORM AND CONTROL ACT

FRIDAY, FEBRUARY 25, 1983

U.S. SENATE,
SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 124, Dirksen Senate Office Building, Hon. Alan K. Simpson (chairman) presiding.

Present: Senator Mathias.

Staff present: Richard W. Day, chief counsel and staff director; Tina Jones, Betsey Greenwood, Donna Alvarado, Arnold Leibowitz, and Carl Hampe.

Senator SIMPSON. The committee will come to order.

These are interesting trappings here. I have never used this room, I do not believe, before, but it is not exactly the most dazzling place, but it does have room. So, we will proceed.

Yesterday, I made the statement with regard to the issue that we are confronted with in the series of hearings that we are going to hold, and today we should have, at one time or another, the full membership of the subcommittee, and each may wish to participate in whatever way. I look forward to that.

Senator Kennedy will be a bit late, with the confirmation hearing that he must attend.

I want to say that I look forward very much to working with Charles McC. Mathias, the senior Senator from Maryland, who is now a member of the subcommittee, and who served with me on the Select Commission, Immigration and Refugee Policy, as he did also serve with Father Ted Hesburgh, and with Senator Kennedy. He brings a wise and articulate demeanor to this task, and that I look forward to working with Senator Howell Heflin, who also brings those same attributes to the fray.

Senator Grassley, of course, continues on the Subcommittee and has been a very patient and sincere participant in the process of the legislation.

So, today—well, first, we do have our new member of the Subcommittee here. Mac, would you have anything you would want to share at this point?

Senator MATHIAS. Well, I would just thank you, Mr. Chairman, for your words of welcome to the subcommittee. I hope that we can contribute more than to the atmospherics. I do not know if my demeanor is always either wise or restrained.

Senator SIMPSON. I did not say restrained. I never said that.

Senator MATHIAS. That would not be the unanimous view. I think we are fortunate to start out with, as our opening witness, the Chairman of the President's Commission on Immigration. Certainly, it was an eye opening experience for me, as I am sure it was for you, to serve on the Commission, and to really dispel some of the myths about immigration, and to find out some of the facts about it.

So, that I hope that we can contribute not only demeanor, but perhaps a bill to the President's desk as a result of the activities, and Mr. Chairman, your leadership is the critical factor here, and what you have contributed is, I think, enormously important, and certainly will be vital as we go through the legislative process again this year.

Senator SIMPSON. Thank you very much, Mac.

Our first witness this morning is the good father, Rev. Theodore M. Hesburgh, the former Chairman of the Civil Rights Commission, former Chairman of the Select Commission on Immigration and Refugee Policy, and presently a cochairman of the very active group, the Citizens' Committee for Immigration reform.

And as I say, I served with this gentleman as he presided over the Select Commission with a very fair and steady and firm hand, and he dealt with a very interesting cast of characters, I can assure you, and he did that beautifully. He is an extraordinarily sensitive humanitarian, and a man who gives very much of himself to the causes in which he believes. Without his skills of reconciliation, at least, and direction, I think that the efforts of the Commission would have been severely stalled. He and I have agreement on many matters. We have disagreement on others, especially sometimes in the area of legal immigration, and of course, the House measure differs from the Senate measure in that aspect, and those are things I know can be resolved, I am assured of that.

So, he has been a very marvelous counsel to me. I thank you for your efforts, particularly as you travel the country on behalf of the citizens' committee. I keep coming across your tracks. You have tremendous demands on your time, but you have certainly given generously of it to the cause of this legislation, and to undertake, very humane actions toward these grievous problems of immigration and refuge policy reform.

So, I look forward to hearing your testimony, and welcome to the subcommittee.

STATEMENT OF REV. THEODORE M. HESBURGH, C.S.C., COCHAIRMAN OF THE CITIZENS' COMMITTEE FOR IMMIGRATION REFORM, AND FORMER CHAIRMAN, SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY, ACCOMPANIED BY MRS. NINA K. SOLARZ, EXECUTIVE DIRECTOR, CITIZENS' COMMITTEE FOR IMMIGRATION REFORM

Reverend HESBURGH. Thank you very much, Mr. Chairman.

May I present the lady who is at my left here this morning, Nina K. Solarz, who is the wife of the famous Congressman, Steve Solarz?

Senator SIMPSON. She is the wife—he is the husband of——

Reverend HESBURGH. He is her husband. Yes; I knew there was a better way of doing that. I appreciate you married men informing me about this. [Laughter.]

Senator **Mathias**. We learn that fast, Father.

Reverend **Hesburgh**. I know, I am trying to learn, too.

But the thing that I would like to say in presenting her is, that she has more than anyone I know, worked with our Citizens' Committee for Immigration Reform, of which I am a cochairman with Reubin Askew, Ben Civiletti, Lane Kirkland, Elliot Richardson, George Romney and Cy Vance. She has worked hard with our group and with all the other members of the citizens' committee, some 60 of us, to keep alive the principles that characterized the consensus of our famous Select Commission about which I will say a word in a minute.

Chairman Simpson and members of the subcommittee, it is, indeed, a pleasure for me to be appearing once again before you at our third round of hearings on this vitally important subject of immigration reform. I am especially pleased to be testifying before my good friends Al Simpson, McC. Mathias, and Ted Kennedy, with whom I worked so closely for the 18 month tenure of the Select Commission on Immigration and Refugee Policy, and then over the course of the last 2 years as you have attempted to fashion a just, decent, and humane immigration reform bill.

Al, I believe that it is only because of the superhuman effort which you and your counterpart in the House, Congressman Ron Mazzoli, have put forth that we are here today seriously considering immigration reform. As I reflect back over the numerous commissions on which I have served, it is obvious to me that our Select Commission report would have gathered dust on the shelf without your heroic efforts. I salute you and Ron and your valiant achievements so far, and I pledge my continued cooperation to make the Simpson-Mazzoli Immigration Reform and Control Act a reality this year, in 1983.

My concern with immigration and refugee policy is well known and my positions on the issues which confront—and sometimes confound—us in this area are on the record. Your bill parallels most of the recommendations of the Select Commission on Immigration and Refugee Policy and recognizes the necessity for controlling illegal migration—closing the back door—while at the same time permitting legal immigration at a reasonable level—opening the front door.

SANCTIONS

Specifically, our Citizens' Committee of Concerned Americans applauds the effective, intelligent, and fair manner in which your bill addresses the issues of identifying those legally eligible to work in this Nation and sanctions against employers who knowingly hire undocumented workers. It recognizes the fact that people come to this country primarily to work, and that unless the pull of available work is demagnetized, we cannot control illegal immigration. It also understands the absolute necessity for the development of a counterfeit resistant, nondiscriminatory means of worker identification to minimize any discriminatory aspects of sanctions. And perhaps most significantly, it deals with the problem of the millions of undocumented persons currently residing in the United States by offering them an opportunity to become legal residents through an amnesty program. You have recognized that we will all benefit when undocumented persons come out of the shadows in which they live to participate fully in American life with all of the rights and benefits of citizens.

During the course of the debate over the sanctions provisions of the Immigration Reform and Control Act of 1982, we heard much testimony, much debate, sadness and even rancor over the employer sanctions provisions. I believe that we should have learned something from the last 2 years, and we must resume that debate where it left off. It is necessary to encourage the process of education and even compromise and come to grips with the real and genuine concerns of the Hispanic community, in particular, and of all minority groups, in fact, who fear the consequences of employer sanctions.

In my view, coupled with sanctions there must be an identification system required for all persons eligible to work. This is essential to protect prospective employees against discrimination by employers who might turn someone away because of the fear of hiring an illegal alien. I am persuaded that concerns about the use of privacy are not warranted under such a system. As I stated on another occasion, and I quote here:

> What protects our society and individuals against abuse of privacy is the existence of traditions, habits and laws which sustain our 1st, 4th and 14th amendment rights concerning freedom and due process.

An identification system notwithstanding, however, I feel that we must exhibit extreme sensitivity to the civil rights concerns voiced by many in the minority community and perhaps make further adjustments and create new mechanisms to deal with these concerns. As a former Chairman of the Civil Rights Commission, I feel particularly drawn to the concept that to the best of our ability, we must address the genuine anxiety and real fears which people have expressed.

It seems to me that the manner in which the Mazzoli bill in the House has dealt with the possible discriminatory aspects of employer sanctions by requiring the Civil Rights Commission to review the effects of the law and by creating a Department of Labor/Department of Justice task force to review complaints of discrimination offers possible avenues for minimizing any perceived employment discrimination. I would recommend that these mechanisms be seriously considered along with possible additional safeguards to monitor the operation of sanctions.

LEGAL IMMIGRATION

As far as legal immigration is concerned, we are in total agreement with the principle that refugee admissions should be outside of any fixed ceiling on numbers of legal immigrants. We must be given flexibility to deal with world crises in a humane manner, and at the same time we need to assure adequate visa numbers for legal entry into the United States under the family reunification and independent immigrant categories.

There is nothing intrinsically wrong with a ceiling—or a cap—if that number is high enough and the system is flexible enough to permit accommodation to changing circumstances. A problem arises if the numbers for legal entrants into the United States is inadequate for our own national interests.

We often seem to lose sight of the fact that it is clearly in the interests of our Nation to accept a substantial number of permanent resident aliens. I think it might be well here to quickly summarize the findings of the Select Commission regarding the positive aspects of legal immigration. And I am sure that the two members of that Commission here present will recognize these eight points.

First, immigrants work hard, save and invest and create more jobs than they take. Thus, they contribute to economic growth in the United States. That is true even for refugees although the contribution takes place after a longer period of adjustment.

Second, immigrants rapidly pay back into the public coffers more than they take out.

Third, immigrants strengthen our pool of younger and middle-aged workers, thus strengthening our social security system and enlarging U. S. manpower capabilities.

Fourth, immigrants strengthen our ties with other nations.

Fifth, immigrants strengthen our linguistic and cultural resources.

Sixth, immigrants and their children embrace American ideals and public values rapidly and help to renew them.

Seventh, immigrants give a brilliant demonstration to the world of the advantages of a free society. Perhaps the best testimony of this, that I know, is the fact that about 40 percent of the American winners of Nobel prizes are foreign born.

And finally, eighth, the children of immigrants acculturate well to American life and actually seem to be healthier and do better at school on the average than those of native born Americans. Hard to believe perhaps, but true.

In view of these findings, I urge you to consider admitting slightly more than 425,000 immigrants yearly—perhaps 475,000—anually. By admitting a higher number, we would still be below the historic average, and we would be in a position to accommodate the additional 40,000 visas which I feel should be allocated to both Mexico and Canada.

As I stated last year, and I quote again:

> The internal allocation in the proposed legislation between the family reunification category and the independent immigrants, together with the elaborate system of adjustment of numbers of family members within the country ceilings, needs close scrutiny.

It is still my impression that your bill errs on the side of restricting family reunification when this policy is precisely that which we want to preserve.

Ideally, we probably should devise a system which contains a mechanism for flexibility in the ceiling for legal immigration. The Select Commission considered an immigration council in its deliberations which would permit adjustment within admission goals set by the Congress. I still think this is a credible idea and I would urge this subcommittee to seriously consider its implementation. A small select council could adjust yearly numbers within a long-range—perhaps 5 year—ceiling which Congress would set, thus achieving control, yet retaining managed flexibility in our system.

I am sure you remember, Al and McC., how often we discussed this matter of flexibility. We were not able to get it into the recommendations of the select committee, but I still think it is a good idea, and I think flexibility is something that we are going to need badly with changing world circumstances in the years ahead.

ASYLUM PROCEDURES

Finally, I should like to address the issue of asylum procedures and the need—once again—to provide all assurances and all remedies for recourse if patterns of discrimination materialize.

The original Simpson-Mazzoli Reform and Control Act recognized the need to improve border enforcement and facilitate the deportation process, keeping fairness in mind. As my fellow Commissioner and committee member, former Attorney General Benjamin Civiletti said in testifying previously on this issue, and I quote again:

> No one can be satisfied with an asylum process which takes years or an immigration status which results solely from endless hearings. Increasing both the quantity and quality of judges to hear deportation and asylum cases and curtailing the multiple avenues for appeal, are some methods to cure these ills * * *. Fortunately the Simpson-Mazzoli measure recognizes and preserves these values by authorizing constitutionally based challenges and by providing for legal assistance in the asylum process.

Although the bill, as originally introduced, provided for an Immigration Board as an independent appellate body with members appointed by the President, the Simpson bill now places the Board under the authority of the Attorney General. This undermines, I believe, the independence of the Immigration Board and may limit proper review of decisions by administrative law judges. The original conception of the Immigration Board with independent members appointed by the President, seems to me at least, infinitely preferable.

Additionally, as in the issue of the possible discriminatory effects of employer sanctions, it seems necessary to provide explicit procedures for judicial review in asylum cases, as well. The House Judiciary Committee bill deals more thoroughly and more fairly with judicial review procedures. We would advocate their model as a more desirable approach.

As we embark on the third year of debate in the Congress over a new immigration policy, it seems well to reflect upon our experience with the Civil Rights Commission. It took the better part of a decade after the Commission issued its report to enact civil rights legislation into law. And of that, about 60 percent of the Commission's recommendations eventually became law.

Here we are—almost exactly 2 years from the date of the release of the recommendations of the Select Commission on Immigration and Refugee Policy, and we are well on our way toward enactment of the Immigration Reform and Control Act of 1983. Senator Simpson, Senator Mathias, subcommittee members, friends, I salute your achievements so far and stand ready to assist you until our mutual goal—a rational, just, humane and race-free immigration policy for this Nation—is a reality. And I commend you on your efforts thus far to make it a reality.

Thank you very much.

Senator SIMPSON. Thank you very much, Father Ted. You bring extraordinary credentials to your task. As former chairman of the

Civil Rights Commission, I know we have drawn on that background before, we have worked together, and we do want to insure that employer sanctions will not result in increased discrimination in the workplace. You have mentioned your concern, just as we do, about that.

How do you respond to those who firmly believe that discrimination is going to increase with employer sanctions?

Reverend HESBURGH. Al, I think that is a complete misreading of what we are proposing in employer sanctions. I think I could honestly say, after, perhaps 20 years of experience in this field, and many hearings, more than I like to think about, that there already is discrimination in the field of employment and there has been in the past history of this Nation.

What we are trying to do here is to open the field for those who legitimately should have work available, and to close it to those who should not have work available, to somehow demagnetize the magnet that brings them here, which is understandable and human, namely, work.

It seems to me that if everyone has to present credentials when getting a job, and this is what I propose, there is no way of discrimination. The very fact that someone appears looking for a job, and presents proper credentials, he or she has to be considered for a job, or discrimination is very obvious and can be prosecuted.

It seems to me that having this kind of credential would be the very way to eliminate the present discrimination, because although one may look foreign, if one presents proper credentials, one has to be considered for a job, or discrimination is present, and that is already against the law.

So, I look at it as a protection, and I think people who say it is going to add to discrimination simply do not understand what we are proposing, or perhaps have other objections that I simply have not heard, that make sense.

Senator SIMPSON. Well, I know that as we worked together, I think we have legitimately heard everything that could come up, and tried to deal with it honestly as it came up. I must share with you that in the last 2 years, since we have been working, that not one issue has arisen that did not arise as it came before the Select Commission, that is the thoroughness of the work of your group.

Reverend HESBURGH. Our group.

Senator SIMPSON. Yes; our group.

Do you think the existing provisions of the Civil Rights Act are sufficient to protect against and remedy any employment discrimination?

Reverend HESBURGH. Yes; I do, and that is why I suggested that since many of these provisions were enacted into law, at the request of the Civil Rights Commission, that it might be an interesting thing to ask the Commission to review this process annually, at least for the first 3 years of the operation of the law, and to simply certify that in their judgment the law is or is not working without discrimination.

It seems to me if people may fear that this new provision will be discriminatory, or lead to discrimination, one way of avoiding that, if we believe it is not going to lead to discrimination, is to say, let us put it into action, and at the end of the year let us see whether or not there are any cases of discrimination.

I find it hard to even imagine how there can be. If you and I are going for a job, and I am Mexican, and you are American, and we both have papers to prove that we are legitimate applicants for a job as American citizens, or permanent residents to this country, how someone can say he will take you and will not take me, and will get away with being prosecuted under the law, is nonsense. It seems to me that certification in a sense eliminates discrimination, which now can be exercized because there is no certification.

Senator SIMPSON. And indeed that is the crux of the legislation, the sanction, a meaningful sanction, plus some form of verification for, one-time new hire identifier. Only with that do we get the results you just described.

Reverend HESBURGH. One other point that I think is terribly clear is that the most humane part of the whole act is the legalization of those who are now here illegally, the bringing of these people out of the shadows. They now have no rights, many of them pay taxes, with no possible benefits, they cannot even invoke justice, because they are afraid they will be thrown out of the country.

It seems to me that this is critical. It is one of the issues in which our Select Commission voted unanimously. It is one of the few ones on which we voted unanimously. We as Commissioners said that we all believe that the time is ripe for legalization, and we should enact it.

But I think we also said that legalization will depend totally on bringing the immigration problem under some legal and rational control, and that if we do not enact employer sanctions, and certification for employment, in the way it has been proposed in your bill, it seems quite obvious to me we are never going to get legalization. I think one would have to say that those who oppose employer sanctions and certification, for what I believe to be the wrong reasons, are by the same token opposing the legalization of somewhere between 3.5 and 6 million people who are in this country today without documents.

It seems to me that the two are inexorably linked. As I think someone said last year during the immigration debate, maybe love and marriage do not go together anymore, but I will tell you one thing, legalization and employer sanctions and certification do go together inexorably.

Senator SIMPSON. Well, you, in just that last few seconds of remarks, in the last 2 minutes, have defined the absolute total crux of the issue. I have visited and will continue to visit with Hispanic groups all over this Nation. I make myself totally accessible, and I think you can inquire to every single one of them if that is not the case. I say you are imperiling not the legislation, you know, whether that passes or not, life is going to go on around here, I have got plenty to do, you are imperiling the cause in every way, because there is no way that a Congress is simply going to have legalization without these other things. I say it again and again and again, and it comes, I know, to many, on deaf ears, but it is my deep belief, and obviously yours, because you phrased it more beautifully—I could stop, but since I am chairman, I am not going to.

Reverend HESBURGH. Al, could I give you my best image of that?

Senator SIMPSON. Please.

Reverend HESBURGH. I think, when you take all of the more than 100 propositions that were passed by the Select Commission after 2 years of study, 12 national hearings in all points of entry in the United States, 25 all-day consultations, I believe on precisely these points that we are now discussing, with the best experts in the country free to come and testify, it seemed to me that you can boil all of that down to three points, which I look upon as a kind of triad, a kind of stool with three legs.

The one leg is employer sanctions, and certification for work, which is the only way I have seen that you might rationally bring illegal immigration under control in this country, and the third leg of that stool is legalization of those who are now here illegally, to clean up that situation which has been festering for decades.

It seems to me that that stool could only stand on its three legs. If you take one leg away, I do not care which it is, certification or employer sanctions, the legalization and the other two fall. You are going to get all three of them, or you are going to get none of them. If we do not get all three of them, I do not think we are going to rationalize the current irrational situation of immigration.

Senator SIMPSON. Well, that sums up what we are up to.

Mac, do you have any questions you might want to propose? I do not want to intrude.

Senator MATHIAS. Just a very few.

Father Hesburgh, I suspect that an element in the failure of the Simpson bill to pass last year, and an obstacle to the passage of the Simpson-Mazzoli bill this year, is fear—fear that the job market will be flooded at a time when we have 12 million unemployed, fear that the economic condition of the American, the native American worker, will be worse because of the passage of this bill.

Now, of course, that fear is irrational, if you look at the record of your Commission, and I wonder if you could comment on that element of fear, and how we ought to respond to it, because it is a real thing, it is a genuine thing, it is not something that is trumped up, it is what people are feeling.

Reverend HESBURGH. Let me begin, Mac, by saying what I think is a wonderful French proverb, I will not do it in French, because then I would have to spell it out.

Senator MATHIAS. Try me.

Reverend HESBURGH [speaking in French]. Fear is a very bad counselor. And the things that proceed from fear are generally bad news, bad counsel, and bad decisions. But I agree with you, that fear is there, and it is very real on the part of many people.

What we are proposing, of course, is that for someone to be legalized, some of these people in the shadows, they would first have to be working, not be on the public welfare system, they would have to be self-supporting, and they would have to be paying taxes and contributing. They would have to be good citizens, which I think 95 percent of them or more are. They would have to be the kind of people that we would want in America for our future growth I can say honestly the ones that I have met in the course of our Commission's work—and we met a lot of illegal aliens, who quite honestly came up and told us that they were illegal, and what their problems were. I have yet to meet one that I would not be happy to see be an American citizen.

There are people who—many of them have been here many years, have worked hard, raised their children well, and their children are American citizens because they have been born here—but they live in constant fear. So there is fear on their side, too.

I would like to remove that fear. I would like to bring these people out of the shadows. If they do not qualify, as I have just indicated, to be legalized, then they would not be legalized, and then the fear might be justified. But the fact that we are setting down certain conditions for legalization, such as a waiting period of permanent residency, a record of past good citizenship, if you will, even though they are not citizens, it seems to me that it eliminates the problem that suddenly you are flooding a market.

These people are already working. You are not changing the market situation one bit. They already are working, or they will not be legalized.

Senator MATHIAS. And I was interested also in the testimony that your Commission produced, that we can look forward to a labor shortage in America.

Reverend HESBURGH. That is right.

Senator MATHIAS. Now, I think that, of course, depends on economic recovery, but I have confidence that some day we are going to have economic recovery, it may or may not be budding at the moment, we may have to wait for the administration of President Simpson, but some day——

Senator SIMPSON. Power.

Senator MATHIAS. Some day the United States is going to have economic recovery, and in that period, if the projections are even close to the target, we will not only have full employment, but we will have a demand for more new workers.

Reverend HESBURGH. That is so true, Senator, and I can give you the figures, for my own full time job, which is trying to run a university. We are anticipating between now and the 1990's, a dropoff of people going to universities of almost 25 percent, something like 23.7 percent, and that means that the people in that age cohort who do not just go to universities, but many of them go to work, is going to be down by about one-quarter; I think there is no question about the statistics.

I assume, because I am an optimist, that with or without President Simpson, we are going to have recovery. We are going to have it soon.

Senator SIMPSON. Just a moment. I want to stop this budding draft, and say that——

Senator MATHIAS. You cannot. You may be drafted.

Senator SIMPSON. You may be assured that just in dealing with this issue is the assurance that I will never be elevated to the position, and other than that, the awesome power of three electoral votes is too awesome to contemplate.

Now, go on and drop that business.

Reverend HESBURGH. Let me go on and say that once we have recovery, and I assume we are well on that road right now, there is no question in my mind, if one looks not at the projections, but at the people already born, that there are going to be one-fourth fewer of this age cohort moving into the labor force. I have no question at all in my mind there is going to be a labor shortage, and that the problems that face us today with fear, are going to be problems buttressed by hope, if we take rational action now. I have to say, Al, that I think that what you are doing to rationalize the whole question of both immigration reform and refugee policy reform in this country is at the very heart of future planning. We hear all the time about future planning.

I think if we do not solve this problem now, when we do not have to act in fear, when we can act rationally, when we can try to get a kind of immigration law, which you have proposed, which I believe is fair, which is humane, which might be expanded a little bit—but which at the same time is flexible, we may be in trouble in the future. But we do need flexibility.

If things expand, we can expand a little bit. But that is the question of having some type of small operating commission that can work with the Congress and the President in having a flexible approach to this whole question of immigration numbers.

So I do commend you, sir, and your colleagues, on the effort to get a good bill, that is efficient, that is rational, that is humane, and in keeping with our traditional history. At the same time, it is a bill that is efficient, that is going to work, that is going to bring us out of this terrible mess that we are in right now.

Senator MATHIAS. Mr. Chairman, I think that we do not have to depend on statisticians or economists for confirmation of what Father Hesburgh has just said.

When I came to Congress, our great problem was a shortage of schools, a shortage of classrooms.

Reverend HESBURGH. Right.

Senator MATHIAS. The great issue was Federal aid to education, and whether it was going to be bricks and mortar, or whether it was going to go beyond that, into operation. Today, in Montgomery County, for example, our problem is surplus schools. What reasonable disposition can we make of the surplus?

If I could raise just one other question, and that is the urgency of the passage of this bill, because I think there is a new element of urgency that exists today, that did not exist even last year.

As an example, let's take the Mexican economy. I do not want to pick on Mexico, but they are a close and important nation. The Mexican economy is in bad shape, and as the rest of the world rejoices because oil prices are going down, the Mexican economy is going to suffer because oil prices are going down.

That means that unemployment, which has been very high in Mexico, is going to be even higher, and the pressures on immigration will be greater than they have ever been before.

Now, in your mind, does that put a greater burden on us to act reasonably and promptly?

Reverend HESBURGH. I do not think there is any question about it. I think that the pressures that are going to be facing this Nation, not just from Mexico, which we are all well acquainted with, because it is close to us, and as our neighbor perhaps should get some kind of special attention, but from many other nations as well.

I think one could look over the world and see other pressures that one just does not think about. There are today, in this world, I am told, on the best authority I could find, over 12 million refugees. And the numbers are growing.

People who were not counted in this, estimate 3 or 4 weeks ago, are now counted, as all the Ghanaians and other foreign nationals have to leave Nigeria and go home. They come home almost as refugees to their own country. They come home to a country in difficulty, as people who had been profitably employed elsewhere, sending back remittances to their families.

I think that one of the great hidden problems in the years ahead is going to be this refugee problem, and I think that is why we are going to need some kind of flexibility in our laws to take care of it. I think America has been enormously generous, probably more generous than the rest of the world put together, in bringing in refugees, and giving them a new life. I think all of us can understand that, because so many of our forebears came to this country as kinds of refugees, from religious or political persecution, or from economic despair, and this country has been a haven of hope.

I think it is irrational to think that we can take care of 12 million refugees. I would like to see the whole world face this, as a world problem, the way we would face health as a world problem, or environmental issues as a world problem, and to come up with a world solution, in which we do our share, and the others do their share. That is a fair way of approaching this with flexibility, and I think this bill takes a long step toward that goal. But I cannot see this country even exercising the generosity which is our best tradition, accepting refugees and a generous number of immigrants if our borders are so porous that people are coming over them as though they did not exist.

Senator MATHIAS. Mr. Chairman, that is really my last question on this subject, but I am wondering if, with your permission, if I could ask this question out of order, on a subject that does not relate directly to the Simpson-Mazzoli bill?

Senator SIMPSON. You may, indeed.

Senator MATHIAS. But it does relate to a responsibility that you and I may have later this year in the other work of the Judiciary Committee, and we have an opportunity to get philosophical guidance on it.

The Constitution of the United States prohibits a naturalized citizen from occupying the White House, from being President.

There will be an amendment to the Constitution proposed this year which will remove that bar, so that a naturalized citizen might be President.

Do you have any thoughts on that?

Reverend HESBURGH. I would favor such an amendment. I think we need to cast the widest net possible to find people to lead this country, and it would seem to me that we have, among naturalized citizens in the United States, some of the most brilliant, some of the most responsible, some of the most dedicated Americans, perhaps more dedicated than people born here.

Just to give you a casual example, the man who has assisted me the most during all the years of my presidency at Notre Dame, 31 years, as my right hand, as my executive vice president, Father Edmund Joynce, was born in British Honduras. He can never be President, not that he would want to, because he is a priest, but as a human being, and as a leader, to say that a person like this cannot be tapped because he happened to be born outside the country is ridiculous. I would even put it more bluntly, to say that someone who chooses this country, and chooses to come here and accept our traditions and grow in them, and give his talents for the good of the country should be deprived of giving his leadership to the country, is not in our best interest.

I do not think we should penalize ourselves.

Senator MATHIAS. Thank you, Mr. Chairman.

Senator SIMPSON. Just one quick one, Ted.

We have talked about legal immigration, and the preference system, and the categories, and we really went into that rather thoroughly on the Select Commission.

You have always been persistently pursuing the issue of the necessity for seed immigrants. I remember some marvelous discussions and talks you have given on that.

So, I must—you indicate in your remarks that we may have erred on the side of providing for independent immigrants, and restricting of family reunification, and yet, I think you and I would both agree we were quite generous when we had the—thank you, McC.—where we allocated about 350,000 pieces for family reunification, and 75,000 for independent immigrants, and that is a tilt toward family reunification of about 80 percent, and about 20 percent for independence.

Is that an appropriate allocation if we want to go to a cap, and if we would remain flexible with that cap, would that percentage still be appropriate?

Reverend HESBURGH. I think it is, and I would agree with you that the number one thought that went through all of our discussions in the Select Commission was the reunification of families. That is something I think everybody can agree with. Our country is built on families.

On the other hand, I think it is terribly important to have seed immigrants, people who come simply because they see this country as a new life, a new hope, a light in the darkness, if you will. I think that is probably the reason that almost everybody in this room would have to say that their forebears came here.

I know mine did, some of them from Luxembourg, and some from Ireland, on my father and my mother's side. They came from Luxembourg because they were caught in every war between the French and the Germans. All the boys grew up to be shot, and they came out of Ireland because they were hungry, with the terrible potato famine, the like.

Now, I would have to say that that category is so important, that if it did not exist, none of us would be here today. We are here because of that category. We were not reunified with families. There were no families here. Most of our forebears came alone, to start a family here, and I would have to say that we have to protect the independent immigrant, the seed immigrant, the person who brings special hope, special talent, special humanity to our shores, and provides us with a variegated citizenry, and a variegated culture.

I guess what I am really saying, Al, is I put in a sneaky little remark there for 50,000 more.

Senator SIMPSON. I thought that is what you were up to.

Reverend HESBURGH. I have to say that we probably need those extra people, if we are going to do all of the things we would like to do with this bill, but even with 50,000 more it would be well within the average of the numbers we are now receiving.

Senator SIMPSON. That is a subject that will receive attention, I can promise you, and one final question.

If we do not do anything at all, in your view, what do you foresee in this country, if immigration reform is in, some form, is not enacted, and what do you see if the present status quo continues?

Reverend HESBURGH. Al, I hate to think of what would happen if this bill does not go through. I think this is a kind of last chance, you know, when you are coming up the desert and they say last time to get gas or water before you start out across this desert.

I think we have some very, very difficult years ahead. This country is —despite a lot of overseas criticism, it is the kind of beacon that people all over the world will look to.

If I could give you just one little illustration. I did some work with Cambodian refugees and Laotian refugees on the border of Thailand, and there was one Laotian family that stood there on the border, in a tent camp for 4 years, awaiting for a chance to get resettled somewhere in the world. When they called them in one morning and said you are lucky, you have been adopted by a family, you and your wife and four children are going to get on the airplane tonight and go to your new home; the Laotian said, where; and they said Norway. He said, that is interesting, but I am not going to Norway. They said what do you mean, you are not? The people that adopted you are in Norway. It is a fine country.

He said it may very well be a fine country, but I want to go to the United States. The camp director, a little frustrated at this point, after 4 years of pressure from this man, said look, either you go to Norway or you go back to the end of the line. He said, "I will go back to the end of the line, maybe the next time around I will hit the United States."

That is how strong this country is as a magnet for people all over the world. Now, that is not a bad thing. We must be doing something right if that is true of this country, and that nobody wants to go to the Soviet Union, for example.

I would like to say that if we do not get this law under control, God knows what is going to happen.

Senator SIMPSON. Could we have order back there, please?

Reverend HESBURGH. Only the Good Lord will know what is going to happen if we do not get this law under control, if we do not start controlling our borders better than we have in the past.

It seems to me we could have a terrible backlash, we could have a terrible period of repression. I think that people tend to forget that in our lifetime, in our recent lifetime, twice, this country has rounded up one million Mexicans and pushed them back over the border. Once right after the Bracero program went out, and once after that. That was a terrible thing, because we not only rounded up people who were here illegally, but we rounded up American citizens, and pushed them over the border. We tend to forget that.

I would hate to think of that kind of action going on again, but it could very well go on. Police sweeps, running from house to house, rounding up millions of people, pushing them back over a border, turning that border into a kind of armed camp.

I would say, Al, that if we do not bring illegal immigration under control now, when we have a chance to do it calmly, rationally, in a humane, efficient and effective way, in a nonracial way, in an open way, that respects our traditions, then we are going to see acts out of fear, acts out of crises, acts in response to what is appearing as an invasion of our country by illegal aliens and others who want to come here.

I would say either we solve our problems rationally and humanely now, or there will be backlash in a few years, when the pressures grow, and the borders become more porous than they presently are, and we will have the kind of law that you and I will be ashamed of.

Senator SIMPSON. Ted, thank you so much. Very provocative, very important and thoughtful. I appreciate it.

Thank you. I appreciate your being here.

Reverend HESBURGH. Thank you for the opportunity.

Senator SIMPSON. So the next panel—and thank you again, Ted.

We now have a panel of Jose Cano, National Chairman, American GI Forum of the United States; Frank Garza, Washington Representative, National Council of La Raza; Joaquin Avila, President and General Counsel, Mexican-American Legal Defense and Educational Fund [MALDEF]; Arnoldo Torres, Executive Director, League of United Latin American Citizens [LULAC].

Good to see you this morning. I appreciate always your participation. You have added much to the legislation, I can assure you, there are many things in it that are a direct result of your concerns, and there will likely be more.

So why do we not just go down the list in response to the agenda, and that would be Jose Cano first. We do have a bit of time constraint there. I hate that little whiz bang on the desk there, but if you could limit your remarks to 5 minutes, so that we will have time for questions and discussion, and knowing each of you would rather do that any way.

So, shoot.

STATEMENTS OF A PANEL CONSISTING OF JOSE CANO, NATIONAL CHAIRMAN, AMERICAN GI FORUM OF THE UNITED STATES; FRANK GARZA, WASHINGTON REPRESENTATIVE, NATIONAL COUNCIL OF LA RAZA; JOAQUIN AVILA, PRESIDENT AND GENERAL COUNSEL, MEXICAN-AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND [MALDEF]; AND ARNOLDO TORRES, EXECUTIVE DIRECTOR, LEAGUE OF UNITED LATIN AMERICAN CITIZENS [LULAC]

Mr. CANO. Good morning, Mr. Chairman.

I thank you for the opportunity again to appear before your subcommittee. It is sort of surprising that the legislation comes up again so soon. We did not expect it, but I thank you for the opportunity to come back.

I want to commend you for taking a tough issue on, and for at least seeking our advice, and one thing that I have to commend is the access that you have provided to myself, and I know some other folks in the community, I think. Oftentimes one of the things that we have asked for is access, and you have been very cooperative with that. We have had some lively discussions.

In the essence of being brief, I would just like to summarize my remarks. I do not have a prepared text. We prefer to send the comments to you at a later time. We do have quite a few recommendations, and we have some of the tacticians in the GI forum that are working on some of the technical aspects of the law, that I do not feel quite adequate to cope with.

I did carry testimony that is very consistent with the national resolution in the GI forum, as you may recall. In the international convention last year you were supposed to be a speaker at the convention, you were dealing with the bill, and so were we. We had a variety of expertise, and we arrived at a resolution that—it incorporates basically the concept of primary illegalization, which is a thing that I have been pounding across this table for quite a while, and then, of course, the concept of family reunification.

We do have some serious concerns in the legalization process. In the last day and a half that I have been here, we have heard some rumblings that there is a move among various factors of the Government, notwithstanding the Congress, to water down the legalization, and at a time we came prepared to get what we think is an equitable legalization process.

So I beg of the Congress to maintain its course, and to make legalization the primary concern, and that anything less, or a watered-down system of what has been proposed be very detrimental to out communities, and I hear from the distinguished President of Notre Dame University that we could face mass deportations, as we did in the fifties, and as we did in the forties.

I think the circumstances are a little different. I think our communities are more united, and I would also like to caution the Congress, as I told you in our previous meetings, that I think there would be a very, very harsh reaction among our communities, and I do not think it is the same era as the 1950's, or those times.

So I hope that there is some sort of attention given to this matter, in the equitable processing of the folks that are in this country.

We would like to submit at this point, that we propose a one tier legalization process. We do not think that the proposed process of a two tier legalization process, one documenting anybody that was here prior to January 1, 1977, and putting on a hold status those that were here January 1, 1977 to January 1, 1980, would be first of interest to the Hispanic community, or there would be a viable program for the Government, or a cost-effective program for the Government.

We think, in essence, it would be a process where you would be legalizing twice a group that should be legalized in one move.

We are proposing to you a recommendation that you incorporate into the language, that language that is currently contained in section 49 of the present act, and in essence, and I will paraphrase, it says any person who was here as of June 24, 1948, at that time, upon presentation of documentation, or proof of physical presence, they would be naturalized.

We are proposing that you simply move this date of the act, under section 249, up to December 31, 1981. We believe that this would give the Government a chance to keep a group from being in a second-class category, first of all. We think that you would be creating serious problems in monitoring that group that you put in a hold status for 3 years.

We think it would be a tremendous filing system in the importing problems that would arise, and we believe that you would have conditional legalization for 2 years.

So we think that our recommendation is something that you ought to look at, that if you are going to legislate, and proceed forward, that this is the humane way to do it.

We also think that this date would be consistent, and be able to include all the Haitian and Cuban entrants. We also believe that there should be strong language in the legislation to create an agreement between the INS—for the assistance in legalizing the folks, the undocumented workers.

First, it would be disseminating information and counseling, and of course, the preparation of the application. We believe that the cost factor is one that would be hard to eradicate as far as the INS is concerned, and that this group of folks that would be working hard in the community would be able to facilitate the legalization process.

We also think that there is a need for assistance to local municipalities in impact areas, especially in the area of emergency medical care and education.

Something that is not part of my testimony, I just heard reference about the load that the undocumented worker has put in this country. I do not think you folks are privileged to the information that I have, but there was a survey done on the border of Texas, from El Paso to Brownsville, Tex., by the U.S. Department of Agriculture, the Food Stamp Department, because of rising complaints of illegal aliens using the stamps of the welfare system and in 1,000 cases that were surveyed, there was only one where one illegal alien had, I believe, purchased stamps.

So I think that that is one of the areas where the illegal aliens is proven.

You are telling me to move on?

Senator SIMPSON. Please.

Mr. CANO. Any way, that is the essence of our testimony.

I would like to say, if I may close, that we are now, by national resolution, opposing the employee sanctions, we are now of the firm belief that in the first place, there would be a strong reaction against the sanctions by a community because of discriminatory factors.

Discrimination is out there. I agree with the gentleman that has sat here, but I do not think he has walked the cities of south Texas to see what type of discrimination is out there. And then we do not think that the Equal Employment Opportunity Commission is able, would be able to cope, it is not coping now with the complaints from Hispanics. Hispanics are, by self-admission of the Commission, are filing at a less lower rate than any other group in America, way less. We do not think that they are equipped to handle the discrimination process. So we have serious concerns.

Senator SIMPSON. Thank you very much, Jose.

Now, Frank Garza, please, sir.

STATEMENT OF FRANK GARZA

Mr. GARZA. Thank you, Mr. Chairman.

My name is Francisco Garza. I am the legislative director for the National Council of La Raza. Thank you again for inviting us to offer our testimony, and I too am without a prepared text, but I do have some oral comments that I would like to submit, and follow up with some written comments at a later time.

Senator SIMPSON. They will be admitted when you submit them.

Mr. GARZA. Thank you very much.

Basically, Mr. Chairman, what my comments are addressing this morning are reviewing where NCLR stood, La Raza, stood last session, and where we find ourselves this session, basically the same legislation, and give you some of the things that we have been struggling with since the last session.

As you know, we were very supportive of the framework of the Simpson-Mazzoli bill, because it was in our interest to compromise and negotiate with the legislators in this process, in hopes that we would win some of the aspects of the bill which we thought highly positive.

However, as legislation moved forward, and there is a strong impetus to enact legislation of this sort, we saw many of our interests being sacrificed, and basically on the floor we saw—on the Senate floor, we saw a reversal of a good legalization program, it became more restricted by amendment, and we went into the Senate floor with a good legalization program.

We have heard that we Hispanic organizations in the community have to accept some of the bad with the good aspects that we can get out of this bill.

Well, I am afraid that in terms of principle, that we have to take a more—I am afraid, that we have to oppose the bill with the tempered opposition, and tempered by the fact that the bill is basically the same again this session, and that we fear that beyond your power, that other interests in the full Senate and the House will alter the bill such that we will face more deficiencies with this legislation. It will impact more negatively upon our community, as opposed to the positive aspects that we were hoping to derive from it. Mainly, the employers' sanction provision, which NCLR opposes very strongly, because we fear that it is going to have a discriminatory impact, and indeed, it is already having a discriminatory impact in some areas of the country.

We are opposed to any idea to expand the guest worker program for temporary labor, given the high unemployment in the country, and the fact that our people are the least skilled people, are the first impacted and the hardest impacted.

Finally, again, the program that we had the most hope for is the legalization program, during the last session, and the hours were running out on the Congress, INS was already preparing regulations, and their specifications for legalization programs, and I would have to submit, at this time that perhaps certain individuals, or perhaps the agency, was not acting in good faith, by not consulting with every organization that can play a good role in this legalization.

As you know, our big issue was getting Hispanic community-based organizations involved in the process. However, we saw a draft, specifications for the program, and some of the things that it was calling for was having agents on location at CBO's, community-based organizations, looking over the shoulders of counselors and intake technicians, and as we told you before, this kind of process will keep the undocumented worker from coming forward, because the agents would be present, and they would have no impact, it would not be beneficial to these people because of their fear for coming forward.

So at this time, you know, we leave you with these comments, these ideas. We want to continue to work to make this legislation work, but I am afraid that as it stands right now, that we are facing opposition to the bill right now as it stands.

Thank you, Mr. Chairman.

Senator SIMPSON. Thank you very much. I appreciate that.

Joaquin Avila, nice to see you again.

STATEMENT OF JOAQUIN AVILA

Mr. AVILA. Thank you, good morning, Senator.

We do have some written testimony that we would like to formally introduce as part of the record, for this subcommittee's hearings.

Senator SIMPSON. It will be admitted without objection.

Mr. AVILA. For the record, my name is Joaquin Avila. I am president and general counsel of the Mexican-American Legal Defense and Educational Fund.

I will be very brief with our comments.

Specifically, we are opposed to the employer sanctions contained in the proposed bill. We are in favor of a legalization program, but, however, we want it to work, we want it to be comprehensive.

The reasons why we continue to be opposed with respect to employer sanctions is that Hispanics will face the heavier burden of that enforcement. Your personal assurances will not be sufficient.

When employers start to enforce this particular provision of the law, irrespective of what kind of worker identification card, or national computer tattoo as put forward by William Sapphire's article, irrespective of what kind of identification, identification will be required. Hispanics and other foreign-looking individuals in the Southwest, in the Midwest, and across the country, will be required to produce greater identification. That is an established fact. That is reality. That is what we are confronted with on a very daily basis.

Employer sanctions, the ostensible purpose is to create jobs for American citizens. But in fact, the reality is, in States which have employer sanctions, there has been no serious enforcement, and in fact, a study that was commissioned—that was undertaken by GAO, indicated also that employer sanctions do not work.

As part of the employer sanctions proposal that the subcommittee is proposing, there is going to be a worker identification card. And no matter how it is styled, whether you call it a worker ID card, it is going to become a national card of identification. It will become part of the necessary documentation that is going to be required for business transactions, that is the reality of it.

So for those reasons, because of the discriminatory impact that it will have on Hispanics, and it is not an irrational fear, it is a fear that we have on the basis of documented instances of discrimination in employment, for every case that is filed by Hispanics, challenging discriminatory employment practices, there are countless others that are not filed, and we are going to be experiencing the same situation with these employer sanctions, not that employers will have a specific discriminatory intent to discriminate against Hispanics, but because of the sanctions that are posed by this particular piece of legislation, they will be very concerned about not incurring any liabilities, and for that reason we will share more of the burden in the enforcement of this particular bill.

With respect to the legalization program, we are in favor of a legalization program that is comprehensive. The present bill does not, in our opinion, employ, or consider a comprehensive legalization program.

According to estimates provided by the INS, the particular program that is being considered, that was introduced in the last congressional session, it will cover approximately 38 percent of those persons who are eligible—of the undocumented population.

What happens to the remaining 62 percent?

What will happen is that the INS will be conducting similar types of operational jobs that were conducted just recently. Operation jobs left a very bad taste in the Hispanic communities. It resulted in discriminatory stops, discriminatory seizures of persons, discriminatory searches of persons, and that is what the legalization bill is going to encourage. Because it is not going to cover all the undocumented persons in this country.

Second, INS has stated in their own proposals, that they are going to go out and try to ferret out the remaining 62 percent of the undocumented population. How do they propose to do that? The same way that they have been doing it in the past, and in fact, we may even have residential sweeps again.

We may even encourage greater participation by local law enforcement officials to enforce the immigration laws. That is what this bill is going to do, and it is going to create a very bad situation for the Hispanic community, and it is going to make immigration the key civil rights issue for the Hispanic community in the coming decade.

Thank you.

Senator Simpson. Thank you very much.

[The prepared statement of Joaquin Avila, newspaper article from the Los Angeles Times, and the prepared statement of Antonia Hernandez follow:]

PREPARED STATEMENT OF JOAQUIN AVILA

INTRODUCTION

Mr. Chairman, my name is Joaquin Avila, and I am the President and General Counsel fcr the Mexican American Legal Defense and Educational Fund. MALDEF is a national civil rights organization dedicated to preserving the civil and constitutonal rights of persons of Mexican and Hispanic descent. We currently have offices in San Francisco, Los Angeles, Denver, San Antonio, Chicago and here in Washington, D. C.

In recent years, issues concerning U.S. immigration policy and alien rights have become increasingly important to MALDEF, because of their significant impact on our Hispanic population. We have had the opportunity on several occasions to testify before your committee and to submit extensive written testimony delineating our positions on various legislative proposals.[1] and I welcome the invitation to continue that dialogue today.

EMPLOYER SANCTIONS

Because of the intensity of debate which developed around the Simpson-Mazzoli bill last year, I am sure that members of this committee are familiar with MALDEF's views, particularly with regard to employer sanctions.[2] In the discussion of this issue,

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[1] Testimony of Vilma S. Martinez, President and General Counsel, MALDEF, before the Joint Senate and House Subcommittee Hearings on Immigration and Refugee Policy, May 6, 1981.

Testimony of John Huerta, Associate Counsel, MALDEF, before the Senate Subcommittee on Immigration and Refugee Policy, September 30, 1981 on President Reagan's employer sanctions proposal and October 2, 1981 on President Reagan's proposal for employee verification.

Testimony of Antonia Hernandez, Associate Counsel, MALDEF, before the House Subcommittee on Immigration, Refugees, and International Law, October 15, 1981 on President Reagan's legalization proposals.

Testimony of Morris J. Baller, Vice President for Legal Programs, before the House Subcommittee on Immigration, Refugees and International Law, October 11, 1981 on President Reagan's employer sanctions proposal.

Testimony of MALDEF before the Senate Subcommittee on Immigration and Refugee Policy, October 22, 1981 on President Reagan's Guestworker proposal and November 23, 1981 on President Reagan's proposals re the quota and prefernce system.

Testimony of Antonia Hernandez, Associate Counsel, before the Joint Senate and House Subcommittee Hearings on the Immigration Reform and Control Act of 1982, April 1, 1982

[2] For brevity's sake, appended to the principal testimony is MALDEF's analysis of the Simpson-Mazzoli proposals.

I will focus my remarks on a few key points. Our principal objection to the proposed legislation centers on our beliefs that it will greatly increase discrimination against Hispanics and other foreign-looking individuals. We have previously outlined these concerns and I will not address them at this time.

The basic premise which breathes life into employer sanctions is the assumption that undocumented aliens come to the United States in search of employment opportunities. Thus, if one were to devise a means of discouraging their unlawful entry into this country, it would be in the form of penalties--both civil and criminal--against the employers who hire them. While unemployment and underemployment are clearly powerful forces which impel immigrants to seek a future elsewhere, this is but one dimension of the problem. The fact is, if people cannot live in peace in their own country, they will go elsewhere to find it. The tragedy we see today is that civil war, political instability and social injustice are on the rise in many of the sending countries. When the question is one of life or death, we know that people's natural instincts will choose life over death or torture, even if it means leaving home and all that is familiar and dear to them. Our country offers the promise not only of higher-paying jobs and better economic conditions, but also that much-desired social stability. In some cases, immigrants can expect a supportive welcome from family members or friends already established in the United States. Given the existence of these additional factors, we see the flaw--and a fatal one at that--in the concept of employer sanctions: it is simply too narrow a vew to respond to the other pressures which compel people to immigrate elsewhere.

Equally important, but less often recognized, are the forces which lead employers to seek out undocumented workers. Such workers are well known for their willingness to work hard. They are noted for their high rate of productivity and their avoidance of conduct which may endanger their jobs. Moreover, many Americans are reluctant workers to devote themselves to low-paying positions or jobs with little or no status. Thus, the belief that undocumented workers take jobs away from American citizens is erroneous. Nowhere is thismore evident than in the aftermath of "Operation Jobs," a nation-wide campaign of workplace raids conducted by the Immigration and Naturalization Service in April of 1982. A Los Angeles Times survey of businesses targeted for the INS raids revealed that eighty per cent of the undocumented workers apprehended in Los Angeles and Orange counties had returned to their former employment.[3] Employers interviewed by the Times stated that citizens and legal residents hired to fill the vacancies had left, either because the pay was too low, the working conditions were not to their liking, or the job too demeaning.

The lessons gleaned from "Operation Jobs" show us that our economic problems are rooted in causes much deeper than unlawful immigration. Employer sanctions will not replace the antiquated machinery which now run our steel mills. It will not halt the growing number of plant closures in our basic industries. Nor will it reverse the business bankruptcies which are presently occurring at record rates.

The penalties contained in the employer sanctions proposal will not eliminate the market for undocumented workers nor deter employers from hiring them. As a matter of fact, the legislation is structured in such a manner that there will be little resources for enforcement. Equally important the penalties are not severe enough to deter the employment of the worker. In the second six months, the Attorney General will merely issue a warning, regardless of the number of violations found. Moreover, civil penalties amount to only $1,000 for the first offense and $2,000 for each subsequent offense. These fines would remain the same regardless of how many undocumented workers were located at an employer's place of business. In other words, the employer would be fined per offense, rather than per undocumented employee. Even if the employer were found culpable, the employer could delay payment or reduce the amount of the fine through the administrative hearing and appeal procedures. In light of these watered-down penalties, employers will risk the fines, because the advantages of such a workplace still outweigh the consequences. It would not be surprising if employers factored the additional expenses incurred by employer sanctions into their overhead and pricing structures. For instance, the costs could be absorbed in a variety of ways: by a further reduction in wages; through speed-ups in production; or, more likely, in higher prices to the public for the goods or services provided.

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[3] "Most Aliens Regan Jobs After Raids," by Larry Stammer and Victor M. Valle, Los Angeles Times, August 1, 1982.

The anomaly presented in the legislation is that, while the penalties against employers are minimal, the punishment that would be enacted against undocumented workers are severe. For example, the bill contains provisions making it unlawful for a person to alter or to use altered identification documents. Such conduct is made a felony, with a resulting penalty of $5,000 in fines or 5 years in prison or both. At the same time, the person would be subject to deportation. A knowledgeable employer could use this law against an undocumented employee. He could still accept the documentation as valid and hold the threat of exposure to the authorities over the heads of the undocumented workers. He could warn them that unless they are willing to toil silently under adverse or illegal conditions, they will not only be turned over to INS, but they will also be turned in to the FBI and face many years in prison. Since few employees are aware of their rights or even try to vindicate the wrongs committed against them, employer sanctions will drive them further underground into greater exploitation.

The minimal penalties and the problems of satisfying the "knowing" requirement all mitigate against effective enforcement. Realistically, neither the INS nor the Department of Labor will have the resources to seriously challenge employers. Moreover, the combined experience of eleven states with statutes prohibiting the knowing employment of undocumented workers reveal that such laws are universally unenforced.[4]

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[4] Comptroller General Report, "Prospects Dim for Effectively Enforcing Immigration Laws," General Accounting Office (November 5, 1980). The report showed that under state-created employer sanctions, there had been only one conviction with a fine of $250.00. Ibid at 8.

In analyzing the administrative burdens and costs incurred in a national employer sanctions law, the report concluded that such a law would represent "drastic action," the cost of which, "in terms of strained international relations, restrictions on freedoms of the U.S. citizenry, and increased resources for law enforcement would be formidable." Ibid at 11.

Virtually all available data suggests that employer sanctions are ineffective. Illustrative of this finding is the recent General Accounting Office Report that was commissioned by the honorable Senator Simpson and published in August of 1982.[5] That 20-nation survey presents the most forceful evidence pointing to the inefficacy of sanctions. First, it demonstrates the continued ability of employers, to evade responsibility for employing the undocumented. Secondly, when they were apprehended, the fines proved to be too small to act as a serious deterrent. In countries where fines were substantial, such as the $40,000 penalty in West Germany, the employers usually obtained significant reductions through the appeal process. Even the criminal penalties appended to the fines proved to be impotent. The report indicated that the unlawful employment of undocumented persons was simply not weighted as heavily as other types of crimes. Thus, it was an extremely rare occurrence for courts to sentence employers to prison. Thirdly, the laws themselves could not be effectively enforced because of strict constitutional restraints on the conduct of these investigations, the lack of enforcement resolve and the shortage of personnel--problems which we, too, encounter.

Mr. Chairman, we cannot ignore these findings. At best, employer sanctions presents only an image of control. Are we willing to expend millions of dollars in promoting a lawwith no substance? A law which will cause discrimination and economic hardship to untold numbers of Hispanics and other foreign-looking Americans? Or, will we finally come to grips with the problems and develop a comprehensive, long-term solution?

If we acknowledge the complexity of forces underlying undocumented immigration, then we must realize that the answers are much more complicated than the simplistic approach presented by employer sanctions. We must understand that any reformulation of U.S. immigration policy will require a delicate balance of the spectrum of foreign and domestic interests. Our foreign policy concerns, our economic and trade interests, national security, our relations with developing countries, the civil rights of American citizens are all interwined in our immigration policy. At minimum, this means that the discussion now taking place in Congress cannot be limited to ourselves. The dialogue must expand beyond our borders and ecompass the governments of Mexico, Central America, The Caribbean basin, and other sending countries. It may even demand a thorough review of our current positions in the arena of international politics, if we are serious about reducing the flow of undocumented immigrants and refugees.

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[5] General Accounting Office Report, "Information on the Enforcement of Laws Regarding Employment of Aliens in Selected Countries," GAO (August 3, 1982).

Moreover, we must recognize that undocumented workers already here are subject to incredible exploitation by unscrupulous employers. It is precisely because of their undocumented status that they are made so vulnerable. But the response to the problem is not employer sanctions. Rather, the answer lies in allocating resources for more vigorous enforcement of our labor laws. Were employers to be penalized for failing to pay minimum wage and overtime rates; were they to be confronted with the necessity of establishing a safe work environment for their employees; were they to recognize that such violations will not go unpunished, they would then think twice before hiring undocumented workers. Gentlemen, does it not make more sense to invest our scarce tax dollars in strengthening our existing laws, rather than spend millions in creating a huge new bureaucracy of questionable utility?

LEGALIZATION

As we have expressed on previous occasions, MALDEF believes that a legalization program is an essential component of any comprehensive immigration reform. To mitigate the fear and exploitation these undocumented persons now endure, we must bring this underclass into the mainstream, so that they can enjoy the protection of our laws and assume the responsibilities of full-fledged lawful residents. To fulfill this goal, the program must be simple in design, reasonable in its requirements, and expeditious. The qualifications must be clear-cut, so that people will know what is required of them. The residency criteria cannot be so long or so restrictive as to exclude large numbers of the undocumented population. Most important of all, the offer to legalize status must be genuine. There has to be a good faith effort on the part of the Administration and the Immigration Service to carry out the program to its conclusion without changing the rules midstream.

At the same time, the process must be one that will not discourage people from coming forward; in other words, the legalization program should not be used to deport people if they are found to be ineligible. Lacking such assurances, no amount of public education will draw the undocumented from their protective shell of anonymity.

In this regard, I would like to express several concerns about this recently-introduced bill. When the proposal died in the lame-duck congressional session last year, MALDEF had hoped that the problems outlined in our analyses would provide the basis for further discussion and ultimately a resolution of the criticisms. Of particular interest to us was the legalization program. As I have just stated, the success of any such program depends upon its simplicity of operation, its breadth of coverage, and a genuine effort to legalize our undocumented community. Contrary to many press reports, we realized that the original Simpson legalization proposal contained in S-2222 would not benefit many people if certain problems were not corrected. For instance, the "continuous residence" requirement was not clearly defined. The kind of evidence needed to prove that residence was not delineated. urthermore, the fact that family members had to qualify independently for legalization meant that persons within the same family until now living in the U.S. could face long-term separation and the paradox of some having legal status and others not. Lastly, the broad discretion given to the U.S. Attorney General to issue additional regulations to implement the plan could impose more restrictions on the eligibility criteria and complicate the entire processing mechanisms, thus reducing even further the number of individuals who would ultimately qualify for legalization. These fears which MALDEF has expressed throughout the 1982 debate were amply substantiated when an implementation plan was drafted for the Simpson-Mazzoli bill; in that plan was the acknowledgement that only thirty-eight per cent of the undocumented population would satisfy the requirements for legalization.[6] To our question of what would happen to the other sixty-two per cent, the implementation plan stated that the ineligible applicant would be given a notice to depart "volunarily" from the United States.[7] In effect, the legalization proposal would lay the groundwork for a massive deportation campaign, the scope of which would exceed "Operation Jobs" by six hundred times, tantamount to and surpassing even "Operation Wetback" of 1954 and other similar removal efforts.[8] In all good conscience, MALDEF cannot support a legalizaton proposal that is a disguise for a whole new series of raids into the undocumented community. We cannot urge people to come forward and identify themselves to the Immigration Service with the knowledge that, by doing so, they risk deportation. The fear and distrust that are so deeply ingrained in the hearts of the undocumented arose in part from their experiences with broken promises.

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[6] Draft of Implementation Plan for the "Immigration Reform and Control Act of 1983, P.L._____," November 1, 1982, pp. 1, 12. The Immigration Service estimated that out of a population of 6 million undocumented, only 2.3 million would meet the date of entrance and continuous residence requirements for legalization. Of the eligible 2.3 million, about 730,000 would apply for permanent resident status and 1.6 million would seek temporary resident status.

This distrust was recently exacerbated by the predicament that thousands of immigrants known as "Silva letter holders" found themselves in. Numbering in the range of 250,000, these persons and their families were, at one point in time, eligible to immigrate under our federal laws. In fact, they all filed applications to legalize their status. Had it not been for an illegal policy implemented by the Immigration Service, whereby it shifted the immigrant visa numbers rightfully belonging to those with INS-approved application to another group of persons, many of these Silva people would be lawful residents today. As it were, court litigation challenged the legality of the INS policy decision, and a preliminary injunction was subsequently issued, compelling the Service to recapture and return the visa numbers to members of the Silva class.[9] Despite the court order, administrative snafus, consular backlogs, and general mishandling of the applications delayed the processing of these individuals as much as two to four years. When the court order expired in November of 1981, we found approximately 100,000 to 150,000 Silva class members who could not immigrate. Again, it was through no fault of their own. Without consulting the plaintiffs' attorneys or the court, the Service had begun, on its own initiative, to issue letters to the clas members and in effect sent more Silva letters than there were available visa numbers.[10] Out of status once more, they found themselves with an uncertain future. Confusion and panic immediately set in.

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[7] *Ibid*. at 25.

[8] "In addition to fraud-related activities, the Enforcement Division will focus on both the removal of an estimated 3.7 million aliens already in the United States who cannot qualify for legalization and preventing the creation of a new illegal population. "Aliens apprehended by INS Enforcement personnel--whether at the border or in the interior--during the eighteen-month legalization program will be asked a series of questions regarding residence to determine their eligibility for legalization. *Unless individuals appear potentially eligible for the adjustment of their status, they will be subject to regular INS enforcement procedures* (emphasis added)." *Ibid* at 42.

In January of 1982, MALDEF, along with a score of other organizations, submitted an administrative petition to Attorney General William French Smith, requesting that he exercise his discretionary authority under the Immigration and Nationality Act to grant extended voluntary departure status to remaining members of the Silva class. No definitive response came out of that petition. Yet in the heat of debate over the Simpson-Mazzoli legislation, the Administration decided to grant temporary legal status to the Silva people in August 20, 1982, effective on that date and terminating on January 31, 1983. As we all know, the Simpson-Mazzoli bill did not pass. And January 31st has come and gone.

Once more, the Silva people are thrown back into turmoil. Again, they face a future of uncertainty. Again, they have reverted to an undocumented status.

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[9] See Silva v. Bell, 605 F.2d 978 (C.A., 7ty Cir., 1979). The Silva class was defined as--

> "All natives from independent countries of the Western Hemisphere who have been assigned priority dates for issuance of immigrant visas between July 1, 1968 and December 31, 1976 and whose priority dates have not yet been reached for processing or who have not been called for final immigrant visa interviews."

[10] The Federal district court had mandated the recapture of 145,000 visa numbers. The Service mailed out approximately 300,000 Silva letters.

I detail the experiences of these Silva people, because they illustrate the problems and pitfalls any legalization program will encounter. Many of these individuals came forward and presented themselves to the Immigration Service. They submitted their applications, presented the requested evidence and patiently waited. They satisfied the legal requirements and INS approved their petitions. By a quirk of fate, however, they did not receive that much desired green card. Instead, the Service had chosen to give the immigrant visas to another group of people--a policy that was both reprehensible and unsupported by any legal authority or policy decision. Worse yet, the immigration laws had changed in 1977. Whereas undocumented persons could legalize their status through U.S. citizen children, the 1976 amendments altered the provisions, so that after January 1, 1977, only adult citizen children could petition their parents. Moreover, the amendments had imposed an annual quota of 20,000 on each of the Western Hemisphere countries, consequently causing a drastic reduction in the number of Mexican nationals and others who could immigrate to the United States.[11] But for the preliminary injunction issued in the Silva lawsuit, the delays resulting from the misallocation of visa numbers would have caused a forfeiture of thousands of Silva class members and their families.

Of all persons in the undocumented population, these Silva families should be the first to qualify for legalization. Without exception, these individuals have lived in the United States for a minimum of six years and, in some cases, for as long as ten or more years. They have purchased homes, secured gainful employment, and raised their children in our society. With incredible fortitude and patience, they waited for the Immigration Service to complete the processing of their applications--only to find that the promise of a permanent home was cruelly withheld. If the treatment accorded to these Silva letter holders are indicative of what may happen to other undocumented persons who come forward, then the legalization proposal is doomed to fail.

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[11] Public Law No. 94-571, 90 Stat. 2703.

Neither MALDEF nor the members of Congress find this a palatable possibility. If we are to avoid such dire consequences, then we must change the cut-off date for legalization from January 1, 1977 (for permanent residence) and January 1, 1980 (for temporary residence) to a more recent date, such as January 1, 1983, so that the program will encompass the majority of our undocumented population. In addition, members of a family now living in the U.S. should be considered a single unit for purposes of legalization. An assurance of family reunification will avoid prolonged separations and minimize future violations of our immigration laws. At the same time, it will encourage greater participation from eligible persons in the legalization program.

Lastly, MALDEF firmly objects to the use of any legalization plan to initiate massive deportations. We have lived through wordplace raids, residential sweeps, the terror of Operation Jobs, Operation Wetback and countless other efforts of wide-scale removals of undocumented persons. The image of thousands of citizens and legal residents of Hispanic descent being deported along with the undocumented still burns fresh in our collective memory. We have been involved in so much litigation against INS for violations of civil and constitutional rights of Hispanics[12] that we know it to be trampled should such conduct be institutionalized into our immigration laws.

WORLDWIDE QUOTA AND PREFERENCE SYSTEM

The bill establishes a world-wide quota of 425,000 visas for all legal immigration (excluding refugees) to the United States. Out of this number, 350,000 are set aside for family reunification purposes and 75,000 for the independent immigrant category. Under existing laws, "immediate relatives" of U.S. citizens, defined as spouses, parents or children, are exempt from any numerical limitations. But under the Simpson-Mazzoli bill, they would be integrated into the 325,000 cap for family members. The per country quota of 20,000 annually is maintained; however, Mexico and Canada would receive a larger number of 40,000 visas each year, because of their special relationship to the U.S.

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[12] See, E.G., Gonzales v. City of Peoria, U.S.C.A., 9th Cir., No. 82-5432, oral argument scheduled for March 16, 1983 (local police enforcement of immigration laws: International Ladies Garment Worker Union v. Sureck, USCA, 9th Cir; Nos. 80-5035,80-5054;80-5152, 80-5153 (constitutionality of INS Factory Raids); Garcia v. INS, U.S.C.A. 10th Cir._____ (constitutionality of INS Factory Raids); Illinois Migrant Council v. Pilliod, 531 F. Supp. 1011(N.D., Ill., 1982) (Search and Seizure of Persons).

The bill also proposes to revamp the preference system by eliminating the preference status now accorded to adult, unmarried sons and daughters of lawful permanent residents (under the second preference) and the brothers and sisters of adult U.S. citizens (the fifth preference).

We commend the recognition that Congress has given to the unique and valued relationship we have with our neighbors, Canada and Mexico; but the reservations we had expressed last year remain with us today. The imposition of a worldwide cap for family reunification, the inclusion of immediate relatives in the ceiling, and the elimination of certain family members seriously undermines one of the principal bulwarks supporting our immigration laws--that of family reunification. By placing immediate relatives of U.S. citizens within the worldwide ceiling, this will reduce the total number of immigrant visas available to other family members who fall under the preference system. Indeed, what could well occur is that persons within the same family may be forced to compete against each other for the scarce visas, since there is no limit on the number of visas available to immediate relatives within the 350,000 cap.

The resulting competition could carry over into the individual countries and worsen existing backlogs. Because of the per country quota, visas issued to immediate relatives and independent immigrants in excess of 20,000 in a given year would be deducted from the number available for overall immigration in the following year. in addition, in the current year, visa applications for immediate relatives and special immigrants receive priority over persons applying through the preference system. Thus, it is possible that, in certain years, some countries may have no visas available for those falling under the preference system.

While we see the logic behind the creations of two separate categories for family reunification and independent immigration, we believe that the inclusion of immediate relatives within the cap and the elimination of certain family members from immigrating will actually lead to more illegal immigration. The simple truth is that the desire to maintain the family as a unit is much stronger than the fear of violating our immigration laws. When one considers the fact that a spouse in Mexico who is married to a lawful permanent resident must now wait nine years to legally immigrate to the United States, the agony resulting from such a long, drawn-out separation will compel people to violate the laws and risk the penalties. Rather than allow this to happen, Congress should take steps to eliminate the current backlogs in the preference system by allocating extra visas for a specific length of time to clear out the backlog.[13] Instead of eliminating the fifth preference or narrowing the second preference, we should retain the preference system as it now stands.

THE H-2 PROPOSAL

MALDEF has, on past occasions, expressed its objections to any effort to re-establish a bracero program. I will not recount those arguments at this time. However, I would like to address several issues that were obscured in the debate last year.

Of note is the fact that Congress is now considering a proposal to codify and expand a program which was perceived by an earlier Congress to be a temporary measure in response to isolated, unforeseen labor shortages. When the H-2 program was originally established in 1952, the President's Commission on Migratory Labor recognized that large-scale employment of temporary foreign labor would displace domestic workers and depress wages and working conditions. The House Committee Report specifically addressed these concerns by granting the Attorney General the authority to admit temporarily certain alien workers for the purpose of--

> "...allevaiting labor shortages as they may exist or may develop in certain areas of certain branches of American productive enterprises, particularly in periods of intensified production."[14]

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[13] The Select Commission suggested that allocation of 100,000 extra visas annually for a period of five years.

[14] H.R. Rep. No. 1365 83rd Cong., 2nd Sess., reprinted in (1952) U.S. Code Cong. And Ad. News 1653, 1698.

What began as a stopgap emergency measure has become a routine source of cheap and easily controlled workers. Numerous studies have since pointed out that H-2 workers displace resident workers and lower wage levels and working conditions.[15] If these studies cannot dissuade Congress from considering an expansion of this program, then perhaps the West European experience with "guest" workers may. The European programs began at a time when several countries suffered serious shortages of domestic labor. Unable to fill the need from their native workers, they began importing labor from Italy, Yugoslavia, Turkey and Spain. Hailed as a boon in the 1950's and 1960's, they now present a socio-political dilemma of incredible proportion. The growing presence of foreign workers and their families has fueled xenophobic reactions. The use of an outside workforce has encouraged the development of second-class "citizens" and institutionalized discrimination. Moreover, the "guest" workers who were originally viewed as temporary became permanent--legally or illegally. The existing data analyzing this phenomena all suggest that emporary worker programs compound the problem of unlawful immigration, rather than solve it.[16] If we are to learn anything from our experiences with the bracero program and from the European "guest" worker programs, it is that --

> "...the seriousness, complexity and far-reaching consequences of such an undertaking can hardly be overestimated."[17]

Congress should not be swayed by short-term interests that may well result in long-term costs we are not prepared to pay. Instead, this deliberative body should seriously consider our recommendations to impose stricter controls on the H-2 program:

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[15] See, e.g., 41 Federal Register 25017, 25018 (January 22, 1976); Agricultural Prevailing Wage Survey Summary Report, New York State Department of Labor (1978); Review of Rural Manpower Service, Department of Labor (1972) at 37.

[16] See, e.g., Miller and Yeres, A Massive Temporary Worker Program for the United States: Solution of Mirage? World Employment Programme Research, Working Papers, International Labor Organization (Geneva, 1979) at 14-16; Phillip L. Martin, Guestworker Programs: Lessons from Europe, U.S. Department of Labor, Bureau of International Labor Affairs (Washington, D.C., 1980).

[17] Temporary Worker Programs: Background and Issues, Congressional Research Service (Library of Congress, 1980) at 120.

(1) A cap should be established on the total number of temporary workers who can enter the U.S. annually. (The program currently admits about 30,000 temporary workers each year. In 1981 there were about 18,000 H-2 workers.)

(2) To remove some of the economic incentives for importing foreign labor, the exemptions from payment of social security and unemployment insurance taxes should be eliminated. H-2 employers should pay these taxes as they would for domestic workers, but set aside the monies in a trust fund that would eventually be returned to the guest workers. However, in no way should these sums be considered a part of the temporary worker's wages.

(3) The Department of Labor should establish alternative guidelines, besides the "adverse effect wage rate" that would prevent or minimize the depression of wages and working conditions resulting from the presence of temporary workers.

(4) Procedures must be established to insure good faith and aggressive recruitment of domestic workers through a variety of channels. Employers must be required to maintain detailed administrative records of their recruitment efforts which will be subject to examination by the Department of Labor. In addition, evidence of these attempts at domestic recruitment must be attached to the application requesting temporary foreign workers.

(5) Domestic workers or interested employee groups should be given the opportunity to appeal a DOL approval of certification. Under existing regulations, employees can challenge DOL's denial of certification and receive an expedited response, but no such equivalent right exists for U.S. workers who might be adversely affected by the grant of certification.

(6) The Department of Labor should exercise all jurisdiction over the employer application for H-2 workers. INS review of a DOL denial of certification should be eliminated, because employers, in the past, have taken advantage of this alternative review and used one federal agency to undermine the integrity of another agency's decision.

(7) Additional penalties besides the mere denial of certification must be included to insure that chronic violators will not be able to participate in the program. For instance, the imposition of substantial fines may be an effective deterrent against abuses of the program.

(8) Sufficient resources must be allocated to DOL enforcement mechanisms, so that the rights of H-2 workers are adequately protected.

(9) Any effort to expand the H-2 program must be opposed. The grandfather clause allowing temporary workers to extend their stay in the U.S. should be eliminated; or, at minimum, the burden of proof should be placed on the H-2 employer to establish why he requires the workers for a longer period of time.

ADJUDICATION PROCEDURES AND ASYLUM

The proposals amending the adjudication procedures, the political asylum process and judicial review are the same as those presented in 1982. Briefly, they call for the summary exclusion of aliens who lack adequate documentation to obtain entry, who have no reasonable basis for legal entry, or who fail to apply for asylum. Only persons who are "clearly and beyond a doubt" not entitled to land will be afforded an exclusion hearing. There will be no judicial review of exclusion orders, other than by way of habeas corpus relief in the federal district courts.

For persons who request asylum, the bill requires them to file a "notice of intention to apply for asylum" within 14 days after the issuance of an Order to Show Cause. Within 35 days after filing the notice of intention, the political asylum application must be completed and filed. Asylum cases will be heard before specially-trained administrative law judges. An adverse decision can be administratively appealed to the U.S. Immigration Board, but judicial review of these cases will be eliminated, except for the constitutional right of habeas corpus.

In deportation hearings, the standard of proof for establishing deportability would be lowered from the present standard of "clear, convincing and unequivocal evidence" to a mere "preponderance of evidence." Administrative and judicial review of deportation orders is preserved, but the standards for review would be lowered and severe time constraints are imposed on the filing of these requests for review.

What is most distressing about these proposed amendments is that in the zealousness of attempting to "regain control over our borders," the sponsors are prepared to sacrifice significant due process rights.

While the summary exclusion provisions provide that the Immigration Service shall establish "procedures which assure that aliens are not excluded...without inquiry into their reasons for seeking entry," they clearly do not contemplate inquiries into claims for asylum. In discussing this provision, the Senate Judiciary Committee Report on S. 2222 stated that--

> "It is the intention of this Committee that this be a general inquiry and should not include advice of any right to claim asylum or leading questions with respect to persecution. Only if the alien's answers to such general inquiry provide evidence that the alien may have a well-founded fear of persecution... should the immigration officer specifically inquire about persecution and the alien's desire to claim asylum."[18]

This means that refugees seeking entry into the United States as a country of first asylum must be prepared to advance to state their desire to claim asylum. This is simply not practical considering the lack of sophistication and education characteristic of many asylum claimants and the coercive atmosphere of the "interview" with the Border Patrol agent or immigration inspection officer. Rather than place the burden on the alien to request asylum, a fairer approach would be to impose an affirmative duty on the examining INS officer to advise the alien of his right to apply for asylum and to make the forms available to the individual.

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[18] Report of the U.S. Senate Judiciary Committee on S. 2222 Additional and Minority Views, 97th Cong., 2nd Sess Report No. 97-485 (Washington, D.C., June, 1982) at 34.

By removing the exclusion hearing in certain instances, a mechanism for reviewing an officer's conduct at the border is lost. It gives them virtually unlimited authority to interpret and administer the law, this making the process a totally subjective one. Presently, determinations made in exclusion proceedings can be reviewed under a habeas corpus proceeding in federal court. But under the proposal, an alien who is denied entry would not be able to obtain either administrative or judicial review of an exclusion decision, unless he is first taken into custody; and only at that point would he be able to file a writ of habeas corpus.

An additional concern is that the bill provides no safeguards for returning residents or U.S. citizens who may lack the proper documents to prove their status. This can happen inadvertently, such as the loss or theft of documents; or through one of the myriad hazards of international travel. At the same time, we know that abuses at the border a commonplace.[19] In any event, under S. 2222, citizens or lawful residents will have no way of presenting their claims. The only options available would be to wait abroad until documentation can be obtained or to insist on being taken into custody in order to pursue a habeas corpus action. To avoid these draconian results, administrative and judicial review should be allowed before a final decision to exclude is made; and a reasonable time limit can be imposed on the review and decision-making process. But in no way can we sacrifice justice for the sake of expedience.

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[19] See, e.g., Hernandez v. Casillas, 520 F. Supp. 389 (S.D. Tex., 1981), involving the practice of the Immigration Service in routinely requesting waivers of exclusion hearings and seizing the green cards from returning permanent residents.

In this regard, we would like to draw your attention to some problems in the proposals to expedite the political asylum process and to eliminate judicial review of asylum decisions. We believe these recommendations will engender more due process violations against aliens. Court litigation has already documented numerous violations of alien's rights by the INS.[20] It makes no sense to require asylum applicants to go through unlawful or unfair proceedings in order to challenge substantive or procedural violations. Moreover, asylum cases have not been burdensome to the courts. Between 1979 and 1981, there were only twelve appeals to the Circuit Courts of Appeals that involved asylum claims.[21] So it is evident that asylum cases have not slowed down the court processes nor contributed to the backlog. Even more important is the recognition that judicial review is vital to protecting alien rights. For these reasons, we believe that federal court jurisdiction should be retained in asylum matters.

The other court-stripping features contained in these proposals also present a serious attack on our system of justice. As attorneys, we know that fair and reasonable treatment of persons is assured only by a system that guarantees full judicial review of laws and enforcement procedures. In the immigration field, access to the courts has often been the final barrier between the exclusion or deportation of an alien or permanent resident and the lawful residence of that person in the United States. Can we in good conscience grant access to our courts for one group of persons and yet deny it to another? If we allow these recommendations to go unchanged, we are rejecting one of our most valued due process principles--the right to be heard, the right to have our day in court.

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[20] See, e.g., Haitian Refugee Center v. Smith, 676 F.2d 1023 (C.A., 5th Cir., 1982) affirming Haitian Refugee Center v. Civiletti, 503 F. Supp. 442 (S.D., Fla., 1980); Orantes-Hernandez v. Smith, ___F.Supp.___ (D.D., Cal., No. CV-82-1107-Kn).

[21] Testimony of Cong. Shirley Chisolm, Joint Senante and House Judiciary Committee Hearings on the Immigration Reform and Control Act of 1982, April 20, 1982.

CONCLUSION

Our greatest desire is to see our antiquated immigration laws revised, so that they can meet the challenges of a modern-day, turbulent world. However, in seeking that reform, we must provide every assurance that the changes to be made will be fair and circumspect. We must look toward well-rounded and long-range solutions. We cannot react in a short-sighted manner nor respond with vindictive measures. Instead, we must strike a delicate balance of compassion for immigrants and safeguards for our national interests.

We believe that a comprehensive approach should address several factors. First, we must accept the fact that there is a large undocumented population currently residing within our borders. These people live in constant fear and are extremely vulnerable to exploitation. We must realize that they will not disappear and that we must act to bring as many of these persons as possible under the protection of our laws. Therefore, a broad-reaching legalization program is essential to immigration reform. But the program should be simple to operate, straight forward in its requirement and expeditious. Moreover, if we are to have a onetime legalization program, then we prefer a single-tier approach with eligible persons qualifying for immediate permanent residence. This will minimize the administrative bureaucracy which is likely to develop; and it will ensure that these people be drawn into the mainstream of our society and laws.

Second, recognizing that undocumented immigration arises in part from the desire to reunite families, the INS should place more emphasis on its service functions. INS data processing capabilities should be upgraded to reduce the discouragingly long waiting periods for entry, certification, adjustment of status and naturalization. At the same time, additional service personnel should be hired to clear out the existing backlogs; or, at minimum, more use should be made of voluntary agencies to supplement the INS service work. By modernizing INS procedures and allocating more resources to its visa processing functions, we can minimize some of the causes of unlawful immigration.

Third, to discourage the hiring of undocumented workers, present labor laws should be more vigorously enforced. Greater emphasis should be placed on protecting the rights of employees to minimum wages and overtime rates and to safe working conditions. This would do much to discourage unscrupulous employers from hiring and exploiting undocumented workers as a way of evading these laws.

Fourth, while we realize that INS enforcement will be intensified, we believe that its enforcement recources should be applied without discrimination. Presently, this is not the case; almost 90 percent of INS enforcement activities are directed against persons of Mexican descent, who make up only half of the total undocumented population.

Fifth, in order to deal with the underlying causes of illegal migrant flow into the United States, we must establish dialogue with the governments of the sending countries. At the same time, we must develop a combination of trade, investment and technical assistance programs to these nations in distress, so that we can solve the problems before they become too severe or complicated for resolution.

Lastly, let me assure members of this committee that MALDEF is open to compromise on these difficult issues; but allow me to also state that we remain firm in our resolve to protect the rights of our Hispanic community. First and foremost, MALDEF is an organization committed to protecting the civil rights of the Spanish-speaking population.

[From the Los Angeles Times, Aug. 1, 1982]

MOST ALIENS REGAIN JOBS AFTER RAIDS

(By Larry Stammer and Victor M. Valle)

Eighty percent of the suspected illegal aliens apprehended in Los Angeles and Orange Counties three months ago during nationwide immigration raids on factories are back on the job, a survey by the Times has found.

The results contrast sharply with an earlier survey by the U.S. Immigration and Naturalization Service and call into question INS success in meeting its stated objective of opening "higher-paying" jobs for unemployed Americans and legal residents by deporting illegal aliens.

Dubbed "Operation Jobs," the highly publicized sweep of 5,635 suspected illegal aliens from factories in nine cities throughout the country during the week of April 26-30 resulted in thousands of unemployed flocking to the factories to apply for the jobs vacated by those arrested.

WIDESPREAD CRITICISM

Despite widespread criticism at the time from immigrant' rights attorneys and U.S. Sen. Alan Cranston (D-Calif.), who called the raids "terroristic," Omer G. Sewell, deputy district director for the INS in Los Angeles, pronounced the sweep a success.

"I think we certainly did meet our target," he told a press conference the day the raids ended. "Our target was to open up a substantial number of jobs to American citizens and lawful residents . . . . Judging from reports about large numbers of job applicants seeking these jobs, we believe it's been successful, and we're very, very proud," Sewell said.

Responses to a Times survey of union leaders, management and employees in Los Angeles and Orange Counties three months later show, however, that the INS approach failed.

The Times found that of the 801 workers arrested in the two counties during the weeklong sweep, 646—or 80 percent—are back on the job.

One personnel manager reported, "Some of them were there the very next day. They were deported that evening and they were back the next morning."

NUMBER UNKNOWN

It is not known precisely how many of the returning workers were deported and then crossed back into the United States illegally or were permitted to remain in the United States pending a review of their immigration status after asking for a hearing.

Based on answers from several firms, however, it appears that a sizable majority—or nearly seven out of 10 returned workers—had been deported.

Those numbers approximate the INS breakdown. The agency reported that 68.7 percent, or 550, of the 801 workers arrested agreed to voluntary deportation, and 31.3 percent, or 251, asked for immigration hearings.

Employers also indicated that many of the Americans and legal residents who were hired to fill vacancies did not stay on the job, either because they believed that the pay was too low or because the working conditions were not to their liking. Wages averaged $4.80 and hour in the Los Angeles-Orange County area and ranged from the minimum $3.35 an hour to $7.50 an hour, the INS has reported.

One firm, where wages ranged from $3.35 to $4 an hour, reported hiring 90 new workers immediately after the raids. But Rudy Pompa, employment manager of the B. P. John Furniture Co. in Santa Ana, said 75 of them quit shortly after.

"They told me they found another job, that the work was too hard, that there wasn't enough pay. One tried to provoke the foreman to fire him in order to collect unemployment. His benefits had run out and he was looking for an extension," Pompa said.

Hal Takier, personnel manager of West American Rubber Co. in Orange said, "The Americans? None of them stayed; maybe 1 percent. It isn't the work. It's just that they feel like they want something better, whether they have education or not." When 10 arrested workers returned, Takier said, "I was just glad to get'em back."

Operation Jobs, executed at a cost of $500,000 nationally, including $160,000 to transport deportees to the border, was an experiment to determine whether the INS should concentrate enforcement efforts on illegal aliens holding supposedly "higher-paying" jobs that Americans and legal residents might take. In the past, the agency had been criticized for rounding up illegal aliens in low-paying jobs for which there was insufficient domestic labor.

The reaction from most employers to Operation Jobs was summed up recently by Walter Gibson, controller at Carolyn Shoes Inc. in Monterey Park: "I think if the announced purpose was making jobs . . . then they failed because they did not create jobs. Now, if their purpose was to harass those people who didn't take the time to document themselves, then they succeeded."

Some employers disputed the INS contention that the raids involved workers in higher-paying jobs, and several complained that production lines had to be shut down.

The immigration service is evaluating the effectiveness of the raids. No decision has been made whether to continue them.

Philip Smith, assistant district director for investigations at the agency's Los Angeles office, said on week was not enough time to adequately test the effectiveness of Operation Jobs.

The experiment would have had greater impact if 1,000 suspected illegal aliens had been picked up every week for several weeks, he said.

"But in depressed economy, it did accomplish something," he added. "It focused attention on the immigration problem . . . . It did accomplish the goal of getting people to zero in on employment opportunities in which illegal aliens were arrested. . . but it certainly did not solve the illegal immigration problem or the unemployment problem."

Two weeks after the raids, the INS conducted an "informal survey" of factories in Los Angeles, Chicago, Dallas and Houston to determine how many U.S. citizens and legal permanent residents were hired to replace the arrested workers. Other cities included in the sweep were Detroit, Denver, Newark, New York and San Francisco.

That survey, depending on how the answers are treated statistically, indicated that between 65% and 70% of the jobs vacated by arrested workers had been filled by Americans or legal residents, based on employers' answers.

INS spokeman Bob Walsh in Washington, D.C., said the survey had no "scientific credibility" and that the government had no way of knowing whether employers answered truthfully. Thirty-one of the 39 firms contacted agreed to answer the agency's questions.

Unlike the INS survey, in which respondents were asked to volunteer information to a law enforcement agency that might act on the information obtained, The Times promised confidentiality to those companies requesting it.

The Times survey was limited to Los Angeles and Orange counties and included all of the 12 firms raided instead of using a random sample.

Eight of the 12 firms cooperated, five on the condition that their statistical answers be included only in a total figure for all 12 companies. The eight were Acme Lighting and Manufacturing Co. in the City of Industry, B. P. John Furniture Co. of Santa Ana, Carolyn Shoes of Monterey Park, El Rey Mexican Foods of the City of Industry, Kern's Foods of the City of Industry, Magdesian of California in Monterey Park, Pharmavite of Pacoima and West American Rubber Co. of Orange.

Three firms—Accurid Co. of Santa Fe Springs, Price Pfister Brass Manufacturing Co. and U.S. Sales Co., both of Pacoima—refused to cooperate. One firm, Hiebert Inc. of Carson, claimed not to know how many of its workers had returned to work. In those cases, The Times contacted workers, union officials or lower-level management personnel in an attempt to determine the situation.

Although there is no way to independently verify the answers, union officials and workers who spoke to reporters without the knowledge of their employers tended to corroborate management reports from cooperating firms that a majority of the arrested workers were back on the job.

They also provided specific numbers. A union official, for example, reported that he was informed by Price Pfister management that 67 of the 83 people arrested had returned to work, reportedly after they produced "green cards" establishing them as legal permanent residents or had asked for hearings to contest their deportation.

UNION FILED GRIEVANCES

Manuel Barbosa, business representative of Teamsters Local 389 at Price Pfister, said the union has filed grievances to get the company to rehire the remaining 16 workers.

"I'm not the INS," Barbose said. "I just represent my members. It's not a condition of union membership that you have to be a U.S. citizen."

Price Pfister was the first company hit in the raids and was the subject of widespread publicity. The firm reported that it received 1,000 job applications the next day.

At Hiebert Inc., an office furniture manufacturer, personnel Manager Bill Hite said he did not know how many of the 182 arrested workers had returned to work, although he said "quite a few came back." Another company official said that 95% had returned.

The company reported to the INS two weeks after the raids that it had hired 200 U.S. citizens or legal permanent residents through the state Employment Development Department. An official at the State agency, when informed of the company claim, said, "Oh dear, no! That certainly wasn't the case." An Employment Development Department spokesman said records indicated that the department made only 23 referrals to the company.

In some cases, the return rate was nearly 100%. El Rey Mexican Foods reported 34 of the 35 arrested workers back on the job. Acme Lighting and Manufacturing Co. said 19 of the 20 arrested returned. West American Rubber Co. reported the lowest return rate, with only 10 of the 52 arrested workers back on the job.

The raids have resulted in several employers changing their hiring practices. They report—and the INS confirms—that more of them now ask the agency to check the names of job applicants against INS computer files of legal residents, although there is no legal requirement to do so.

Hite, personnel manager at Hiebert, said that his firm logs the time and day it attempts to verify the resident status of job applicants and the INS official contacted.

Hal Takier, personnel manager of West American Rubber Co., said, "Whether it's legal or not, I've been asking for a green card and a Social Security Card. Usually we take a photo of it and put it on their application. I have no choice, and still you know you're going to have counterfeits and phonies . . . but that's what we have to do to keep our skirts clean."

Other employers, however, say privately that they are skirting the issue.

Said one, "We do require some type of identification, but we're not so naive to think it's not bought on the corner . . . . Depending on how badly we need the workers, we'll accept their identification."

Indications that employers are taking back arrested employees in large numbers, including those who were deported as well as those who sought hearings before an immigration judge, drew criticism from one immigration service official in Washington, D.C.

Informed of The Times' findings, Deputy INS Commissioner Joseph Salgado said, "It would be a disappointment to me to think that American employers, who have a vested interest in this country, would elect to hire or rehire people they know are illegal aliens before Americans. That would be a disappointment to me. That would be a major disappointment. I'm not saying I would be surprised by it."

Disappointment or not, several employers said that as long as they cannot find legal residents and Americans to fill jobs, they will hire anyone. Several employers and INS agents said that most efforts to stem the tide of illegal aliens looking for work in the United States will be ineffective until Congress imposes sanctions against employers who hire illegal aliens.

Others, like Gibson, the controller at Carolyn Shoes, said that if illegal aliens are to be stopped, they must be stopped at the border.

But, he said, the underlying cause of illegal immigration will remain, regardless of how the U.S. government tries to slow it.

"The shoe industry has Puerto Rican workers in New York; in Florida, mostly Cubans; and here, mostly Latins (Mexicans). Whether they are documented or not, I imagine they are documented as much as the Cubans are documented.

"The only difference is the State Department says the Cuban government is communist and the Mexican government isn't. But the workers are the same. They still want to eat no matter what their government is. You can call the Cubans political refugees, but they are principally economic refugees, the same as the Mexicans are economic refugees."

[The prepared statement of Antonia Hernandez follows:]

PREPARED STATEMENT OF ANTONIA HERNANDEZ, ASSOCIATE COUNSEL MALDEF

My name is Antonia Hernandez. I am the Associate Counsel for the Washington, D. C. office of the Mexican American Legal Defense and Educational Fund. MALDEF is a national civil rights organization working to protect the civil and constitutional rights of Hispanics in the United States. For the past several years much of our attention has been focused on immigration matters and thus we are keenly aware of the significance of the issue before the subcommittee today.

The Immigration bill at issue today is one more in a series of proposals which have been formulated in the past several years attempting to address needed reform in our immigration laws in a comprehensive manner. We agree that it is necessary to approach the issue this way and we believe that Messrs. Mazzoli and Simpson have expended commendable effort in trying to address this complex issue. In certain aspects the Mazzoli/Simpson bill is a significant improvement of the Reagan plan. In other ways it falls short of what we believe should be embodied in U.S. immigration policy. It is however, a starting point for serious dialogue and consideration. We are anxious to work closely with the two subcommittees towards a bill which is both realistic and humane.

MALDEF's basic concern with U.S. immigration policy is that it often has serious civil rights consequences for the U.S. Hispanic population. There are close to 15 million Hispanic citizens and legal residents in the U.S. living and working alongside the undocumented population. As we are often indistinguishable from the undocumented, our enjoyment of rights in large part depend on the way our legal, political and social institutions perceive and react to migration and, in particular, to undocumented immigrants. From this perspective, I would now like to outline some of our specific concerns with the Mazzoli/Simpson bill.

LEGALIZATION PROGRAM

The Mazzoli/Simpson bill provides for the adjustment of status of certain undocumented persons who entered the U.S. prior to January 1, 1980, to that of temporary or permanent resident.

This proposal is a vast improvement over the legalization program contained in the Administration's bill and we congratulate the two chairmen for their efforts to design a more generous and workable plan. Notwithstanding the many positive features of the proposal, there are certain aspects which we believe require further clarification and others which cause us serious concern. Today we offer constructive criticism to this proposal in hopes of continuing the meaningful dialogue we have had with this committee as we strive to develop a legalization program which is reasonable and humane.

As we have expressed in previous testimony before the House Subcommittee, MALDEF believes that a legalization program is an essential component of any comprehensive immigration reform legislation. The ultimate goal of such a program is to bring a large underclass of persons presently residing in the U.S. into the mainstream of our society and under the protections of our laws. Its design must be simple, humane, broadreaching and workable. The eligibility criteria must be clear-cut and the cut-off date should not exclude large segments of the undocumented population. The offer to adjust status must be presented in a way which will not discourage people from coming forward for fear of being found ineligible and subject to deportation. Furthermore, the program must assure that family units are not subjected to prolonged separations. Finally, the success of such a program depends on the involvement and cooperation of voluntary agencies.

But for the fact that the Mazzoli/Simpson proposal excludes a large class of aliens who do not meet the 1980 cut-off date, or can not prove otherwise, and that it leaves questions of family unity unanswered, it has potential for an effective and successful legalization program. We feel it addresses many of the deficiencies found in the Reagan plan and we will begin our specific discussion of the bill by pointing to these improvements.

First, the bill proposes a much simpler procedure for legalization than did Reagan's. It involves a one-step process for adjustment to lawful permanent resident for those aliens who entered before the 1978 cut-off date, and a two-step process for those entering between 1978 and 1980. Thus, it eliminates the renewable term temporary status proposed by Reaganwhich would have placed temporary residents in a state of limbo and which complicated and prolonged the process of adjustment to lawful permanent resident. We agree with this two step approach to the issue, but we differ on the established cut-off dates and we will address this further momentarily.

We are pleased that this bill provides for the involvement of voluntary agencies in the legalization process. As we have emphasized earlier, church, ethnic and immigrant-serving organizations can be a powerful force in assuring the success of a feasible legalization program. As we all know, many undocumented persons are fearful and suspicious of the INS and would therefore not be likely to approach the INS directly to apply for adjustment of status. On the other hand, this population will be much less hesitant to come forward to groups which have helped them in the past.

Of similar importance to the success of the program, is a widespread campaign to educate potential beneficiaries. We are glad to see that your bill provides for broad dissemination of information regarding the benefits of and requirements for the program. However, we have serious doubts that the appropriations requested in the bill will be sufficient to cover the entire cost of such a massive project.

The Mazzoli/Simpson bill is clearer than the Reagan bill on certain provisions relating to temporary resident status, such as work authorization and trips abroad. However, like the Administration's bill, it leaves many questions unanswered with respect to treatment of family units under the legalization program. Family members of applicants are not even mentioned in the legislation. This is a serious concern to us because it could result in prolonged separation of families. The proposal does not state whether family members must independently qualify for adjustment of status or whether the family will be considered as a unit. It is unclear what would happen if the head of a household could prove that he or she was here prior to the prescribed cut-off date, but the spouse and children could not, due to lack of records. It is not stated whether persons granted temporary or permanent residence could bring spouses or children currently residing abroad into the country. The failure to provide a special mechanism for family reunification could result in prolonged separations due to the enormous backlogs which exist in the second preference. Exclusion of family members could undermine participation of certain eligible aliens or could lead to a future increase in illegal immigration. Allowing adjustment of status to spouses and children would be more humane and more effective in stemming future flows of unauthorized entry.

The bill states that persons granted temporary status would not be eligible for any federal assistance program except in cases where the Attorney General determines that such assistance is required because of age, blindness or disability or where medical assistance is required in the interest of the public health or because of serious illness or injury. This summary exclusion from public assistance is uncalled for and could result in extreme hardship for temporary residents in instances of unforeseen emergencies. Temporary residents should be subject to the specific eligibility criteria established by the laws and regulations governing the particular assistance programs. These people contribute to the tax base which finances these programs and should therefore be entitled to benefits if they meet the established eligibility requirements. Although the drafters recognized the importance of providing medical treatment in instances of emergency or threats to the public health, placing determining authority on the Attorney General could result in denial of services even in these cases. Other problems could arise from the bills' provision that States or political subdivisions may render these people ineligible for assistance funded by that State or subdivision. Again, these residents would pay taxes in that State and would therefore not pose any additional burden on the State.

There is a current trend on the part of localities to implement policy which denies health care to the undocumented. This is evidenced by actions on the part of the Los Angeles County and Fresno County Boards of Supervisors which have been the subject of litigation. In both instances the courts have issued injunctions to prevent the local governments from cutting off health care services to the immigrant community.[1]

With regard to the termination of temporary status and to the adjustment from such status to that of legal permanent resident, this legislation delineates the criteria more clearly than does the Administration's bill. It also appears to be more reasonable. However, we do have some serious problems with this criteria. First, with respect to the termination of temporary status if after the thirty-first month the alien's application for permanent residency has been denied. If such denial is not based on any clear or legitimate reason, we feel that there should be some appeals process. Secondly, we are extremely disturbed that this bill makes knowledge of the English language a condition of permanent residency, as did the Reagan plan. We object to this requirement because it is inconsistent with current law and it creates a double standard. Under the Immigration and Nationality Act, persons applying for lawful permanent resident status do not have to demonstrate knowledge of English; only those applying for citizenship are required to do so. Yet, like the Administration, you propose to treat this class of aliens with a harsher hand by imposing this additional obstacle. Moreover, the inclusion of this condition appears to be inconsistent with the waiving of Section 212(a)(25) and 212(a)(32) of the INA, which exclude from admission persons over sixteen who can not read and understand some language and graduates of unaccredited medical schools who are not competent in oral and written English. Furthermore, with respect to the "course of study" to achieve such understanding recognized by the Attorney General, we question what type of course would be considered suitable. Having to enroll in an established school could pose financial burdens on the temporary resident, and we doubt that the Attorney General would recognize a person's individual attempts to learn English on his or her own.

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[1] *County Health Alliance* v. *U.S. Board of Supervisors of the County of Los Angeles*, Los Angeles Superior Court, Case No. 0360546 (May 28,1981) *Sequoia Community Health Foundation* v. *Board of Supervisors of County of Fresno*, Fresno Superior Court, Case No. 269458-6, (Aug. 28, 1981).

This English language requirement is wholly unacceptable and should be eliminated from the bill.

Our final set of criticisms to the legislation center around the proposed cut-off dates for eligibility for permanent residence and temporary residence. These dates are crucial because the success of the entire program hinges on them. If we are to achieve full participation in the program, it cannot exclude large segments of the undocumented program who can not meet the cut-off date or who cannot prove otherwise. If there is fear or uncertainty of deportation and/or separation from family members the undocumented will be reluctant to come forward. In establishing the 1980 cut-off date, the bill would diminish the effectiveness of the program, whose goal is to eliminate an underclass of people who are currently present in the U.S. Based on the estimates of the Select Commission, the two chairmen, and many scholars in this feild, it is obvious that hundreds of thousands of undocumented persons would not fall within the grace period.[2] Those entering the country after 1980 and those who were here before but do not come forward because they are uncertain of their eligibility or fear that their documentation may not be acceptable, would continue to reside in the U.S. in fear and would be greatly susceptible to exploitation. This is particularly true in light of the proposed employer sanctions provision which would exempt employers from liability for undocumented workers hired before the date of enactment. Many of the undocumented who would fall within this gap would be the same people employed by these employers. If we truly want to wipe the slate clean, we must allow for the legalization of all undocumented persons residing in the U.S. on the date of enactment.

The way the bill is written, all those who cannot prove residency in the U.S. prior to 1980 would be deportable. How would this committee propose to remove these people from the United States?

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[2] The total estimate of undocumented persons in the U.S. most frequently quoted is 3.5 to 6 million. In 1980 apprehensions alone accounted for 759,000 undocumented persons. It is thought that for every alien who is apprehended, at least 2 succeed in entering the country. Thus the number of undocumented aliens who entered the country after 1980 and are still here is extremely high.

Surely you cannot propose mass deportation. We are all aware of the problems which arose with the implementation of Operation Wetback, when thousands of citizens and legal residents of Mexican descent were deported along with the undocumented. Would the Committee propose then to increase INS workplace raids? This could give rise to other problems, particularly since the employer would not be liable for employing these deportable aliens. Legalization of all those who are currently present would remove the perceived need for employer sanctions. Because many jobs are occupied by these undocumented workers, there is less incentive for new foreign workers to enter illegally. If the workers who currently fill those jobs are deported it would provide incentive for future illegal flow, because the bottom line is that job availability and the so-called need for foreign labor by employers is a continuing factor in prompting workers to enter the country illegally. If the desired end of this legislation is to reduce illegal immigration, it would make far more sense to legalize all people currently here and to shift enforcement efforts and resources to prevent future illegal entry and to monitor visa overstays more effectively.

Our recommendation to this committee is to change the cut-off dates for the legalization program to 1980 for permanent resident status and to the date of enactment for temporary resident status. This would allow for full participation and effectiveness of the proposed program. With regard to the second cut-off date, for eligibility for temporary status, we realize that the Congress may wish to impose a reasonable residency requirement for adjustment from temporary to permanent status. This is understandable. The most important thing, however, is to bring this large underclass of undocumented persons into some legal status.

EMPLOYER SANCTIONS

The principal assumption underlying the concept of employer sanctions is that illegal migration is caused by poverty: people come to the United States to seek a better life, To stop the inflow of undocumented, the federal government must therefore remove the economic incentives that bring them here. However, while economics is one factor, it is not the only one. To the contrary, experts on the subject of international migration recognize that the decision to emigrate results from an interplay of political, social, as well as economic, considerations--political instability, population pressures, social networks and kinship ties, high unemployment, etc. The concept of employer sanctions does not address these additional considerations. Its failure to do so therefore renders it ineffectual as a means of stopping illegal migration.

MALDEF has analyzed other proposals for employer sanctions, ranging from the recommendations of former President Carter, to the Select Commission, to the Reagan Administration. It believes that the latest proposal submitted by Senator Simpson and Congress Mazzoli will not work.

A. Summary of the Proposal

This provision makes it unlawful for any person to knowingly "hire, recruit,or refer" for employment an alien who is not authorized to work or who fails to comply with specified verification procedures. For the first 3 years after the enactment of the bill, the employer can rely on existing forms of identification. The employer must declare under penalty of perjury that he has examined the following documents from the job applicant:

(1) a U.S. passport; or

(2) two of the following:

(a) a social security card or birth certificate, and

(b) an INS-issued card, driver's license, or other state-issued identification card, or other document approved by the Attorney General.

The job applicant, on the other hand, must attest under penalty of perjury that he is a U.S. citizen, a lawful permanent resident, or an alien authorized to work. A person is considered to have complied with the document ceritification requirement if the document "reasonably appears on its face to be genuine." Good faith compliance with the verification procedures is an affirmative defense against a charge of unlawful hiring. The employer must keep records of the affidavits for a period of 5 years and make them available for INS inspection. In the case of new hires, the records are maintained for one year after the termination of the individual's employment.

At the end of the 3-year period, the President must develop and implement a secure identification system. Such a system will be used only for purposes of determining employment eligibility. It will not be used for any other law enforcement activities, and the person cannot be compelled to carry it on his person.

Graduated penalties are imposed on both the employer and the alien for violation of any section of the law. Failure to follow the verification procedures results in a civil fine of $500 per individual. In the first 6 months of the enactment of the law, no penalty will be imposed. In the second 6 months, there will be a warning for the first offense. Thereafter, a civil penalty of $1,000 per person will be assessed for the first offense. The fine will increase to $2,000 for a second offense. After the second conviction, the employer can be subject to penalties of up to $1,000 and/or 6 months imprisonment, or both.

Before assessing a civil penalty, the Attorney General must provide the employer or alien with notice and an opportunity to request a hearing before an immigration officer pursuant to 5 USC Section 554.

The provisions of the law become effective after the enactment of the legislation. Consequently, they will not apply to an employer who has hired undocumented persons prior to enactment and who continues to employ them after enactment.

B. Analysis

The Simpson-Mazzoli version of employer sanctions represents an attempt to respond to the criticisms raised against the Administration' proposal: specifically, the status of the aliens who were hired before enactment of the legislation; the forms of identification and procedures to be used; safeguards against discriminatory hiring practices; effectiveness of the penalties as a deterrent; possible abuses and invasion of privacy occasioned by the use of a national identification card, etc.

Efforts to address these shortcomings have produced some major changes in the legislative language. However, the result may well make the employer sanction laws so unwielding, complicated and burdensme as to be unenforceable.

1. Scope of Coverage

The most significant difference between the Administration's proposal and the Simpson-Mazzoli bill is that the latter covers every employer. It does not limit enforcement to only those employers with a workforce of four or more persons. Consequently, sanctions will not only encompass the large agricultural employer who hires hundreds of farmworkers, but also the single working mother who employs a babysitter to care for her children. The breadth of the language will make effective enforcement impossible. The Immigration Service does not have the personnel or the resources to monitor the hiring activities of every adult in this country. In all likelihood, it will focus its enforcement efforts on the larger employers. This means that hundreds, and possibly thousands, of individual violations will go unnoticed. If employer sanctions is to deter the use of an undocumented workforce, the bill will not serve that purpose, because it already contains a built-in, self-defeating mechanism.

Furthermore, the proposal not only makes it unlawful to hire undocumented persons, but also to "recruit or refer for employment" an alien who is not a lawful permanent resident or who is not authorised to work by the Attorney General, Given this expansive language, employment agencies, temporary help services, union hiring halls, and contractors can be held liable. Coupled with the inclusion of every person who engages in such hiring, recruiting, or referral efforts, the bill can result in liability for the private individual who gives a reference on behalf of a friend. The situation becomes even more complicated when dealing with employment agencies. In these cases, who will bear the primary responsibility for determining the legal status of the job applicant? The agency, or the business hiring the applicant, or both? In the case of a private homeowner who hires a self-employed gardener or roofer, must he verify the legal status of each and every repairman retained to do work? The Simpson-Mazzoli legislation would compel an affirmative response.

2. Verification and Record Maintenance

The standard of compliance called for by the proposal is easy to meet. An employer will ritualistically examine the necessary documents and certify that he has no reason to doubt the authenticity of the identifications provided. The expense incurred by such verification requirements will then be factored into the cost structure of the employer's operations and the pricing of his products or services. The job applicant, on the other hand, will be sure to provide documentation which is valid on its face. Since good faith compliance provides an affirmative defense against prosecution, it will be difficult to prove a knowing violation.

Should the employer decide to be more vociferous in examining the documents, he may make a judgment that the ones produced by the applicant are not genuine. If the applicant is denied employment, because of a finding by the employer that the documents are fraudulent, he has no expedited administrative or judicial recourse to challenge the employer's decision. Existing remedies, such as the EEOC or employment discrimination lawsuits, take years to resolve.

The verification system proposed by the Simpson-Mazzoli bill is tied to a record-keeping requirement, which demands that every person subject to employer sanctions must retain the verification forms for a period of 5 years after the date of hiring, recruiting or referral, or one year after the date of termination of the individual's employment. One can easily imagine the mountains of paperwork that will develop as a result of this requirement. The necessity to create and maintain verification records will impose heavy burdens on employers in terms of the additional time, money and personnel expended in order to comply with employer sanctions. However, the onus will fall most on the private citizen, who will find himself having to keep records on all the people whose services he retains. To avoid this responsibility, he may simply avoid the self-employed entrepreneurs. Instead, he will restrict himself to the larger companies. If this were to happen, the independent business person may soon become an extinct species.

3. Discriminatory Impact on Minorities

The Simpson-Mazzoli bill will not remedy the discrimination problems flowing from employer sanctions. The verification standards are so watered down as to be ineffectual. Enforcement will be selective by necessity, since INS cannot go after every employer. As a practical matter, the employer is more likely to scrutinize the documentation presented by Hispanics, Asians and other foreign-looking individuals. To avoid legal headaches, the larger firms will be more reluctant to hire people who look and sound foreign, even though they are permanent legal residents.

Discrimination will occur not only in the hiring process, but also in the issuance of the proposed national identification card. To the extent the card is made more secure by requiring several types of identifiers, it will be difficult for Hispanic citizens to obtain the work eligibility card. Many may not even have the primary documents. Due to conditions of poverty and limited access to health care, many Hispanic children are not born in hospitals. Frequently, the parents fail to register their births. For these individauls, the only birth record may be a baptismal certificate, or the statements of eyewitnesses to the birth of the child. Will they be acceptable forms of documentation to qualify for a work eligibility card?

MALDEF has testified on previous occasions[3] and enumerated its objections to the employer sanction provisions. The Simpson-Mazzoli bill raises one further objection. If it is enacted, it will apply only prospectively. Employers will not be penalized if they hired undocumented workers prior to enactment and decide to keep them after passage of the law. This particular group of employees will become especially vulnerable to exploitation. The legalization proposal limits regularization of status only to those aliens who can prove entry prior to January 1, 1980. Those who arrived after this date will have no status at all. In effect, they are placed in limbo. They can continue working, but they will not be eligible for legalization. An unscrupulous employer can exploit this vulnerability by threatening the alien with exposure to INS, if he does not agree to the employer's conditions of employemnt. MALDEF strongly objects to this situation, for it revives the spector of forced slavery and pardons the employer for illegal conduct.

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[3] Testimony of John E. Huerta, Associate Counsel for the Mexican American Legal Defense and Educational Fund, before the Senate Subcommittee on Immigration and Refugee Policy, Washington, D. C. Sept. 30, 1981; Testimony of Morris J. Baller, Vice President for Legal Programs of the Mexican American Legal Defense and Educational Fund, before the House Subcommittee on Immigration, Refugees, and International Law, Wash., D. C., October 21, 1981.

4. Potential Abuse of the National Identification Card

Finally, one of the gravest concerns raised by the proposal for a secure identification system is its potential for misuse by the employer and the government. While the language of the bill indicates that the identification system will be used only for purposes of determining job eligibility, and that it will not be used for any other law enforcement activity, it does not support the prohibitions with any penalties. What happens if employers refuse to accept the validity of a document that "reasonably appears on its face to be genuine"? What happens if law enforcement officials use the card for reasons beyond the stated purpose of the statute? Given the serious incursions into the civil liberties of Americans, prohibitions without penalties become prohibitions without substance.

C. Conclusion

In sum, the "cure" proposal by employer sanctions is worse than the illness. The administrative burdens and social costs imposed by the bill renders it unenforceable and ineffective. As the Wall Street Journal editorial[4] so aptly pointed out, there is no correlation between illegal immigration and high domestic unemployment. Thus, the basic premise for having employer sanctions is defeated.

A better approach is to enforce and strengthen existing labor laws. In this manner, employers will be deterred from hiring undocumented workers. Moreover, INS resources should be allocated to the apprehension and prosecution of alien smugglers. These are the real violators who transport and employ undocumented workers for profit.

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[4] Wall Street Journal, "No to Employer Sanctions," March 15, 1982. The editorial cited a U.S. Chamber of Commerce study showing that in July of 1981, states with high concentrations of undocumented persons (California, Arizona, Colorado, Florida, Texas, and Utah) had an unemployment rate of 6.9%, compared to 9.4% in states with low concentrations (Alabama, Alaska, Arkansas, Indiana, Michigan, Mississippi, Oregon, Tennessee, Washington and West Virginia).

NUMERICAL LIMITATIONS AND PREFERENCE ALLOCATION SYSTEMS

A. Summary of Proposal

Section 201 of the Mazzoli/Simpson bill proposes to place ceilings of 325,000 visas on family reunification immigration and 100,000 on independent immigration. Although immediate relatives of U.S. citizens and special immigrants themselves would remain exempt from numerical limitations, the number of visas allotted to these groups would be subtracted from the number available for numerically limited immigration within the family reunification and independent categories, respectively. In addition, Section 202 of the bill would revamp the preference system now embodied in Section 203 of the INA. The current system includes both family reunification and independent categories. The proposed system would be two-tiered, separating the two types of preferences and distributing the available visas to the extent possible at a rate of approximately 75 percent for family reunification and 25 percent for independents. The family category would eventually exclude adult sons and daughters of lawful permanent residents and brothers and sisters of U.S. citizens from the preference system. The independent would add one new preferences--investors.

B. General Comment

We have strong objections to these proposals because they would have a negative effect on family reunification, which has always been a principal factor involved in the formulation of immigration policy. The combined result of these changes would be to actually decrease the number of visas available to family members of citizens and lawful resident aliens, with the exception of immediate relatives of citizens. We specifically object to the elimination of part of the current second preference and the entire fifth preference and to the increase of visas for independent immigrants. We will now address each of our concerns in further detail.

C. Overall Ceiling on Family Reunification

We object to the idea of placing immediate relatives, who are exempt from numerical limitation, within the numerical limit imposed on family reunification immigration. This would result in hardship on many would-be immigrants seeking to join family members in the

United States. Under the existing preference system the number of visas available for family reunification is 216,000. Because the number of visas allotted to immediate relatives in a given year will be subtracted from the 325,000 available for the family category, family members under the preference system are bound to suffer reductions. Yearly immigration for immediate family varies, but using the figure of 150,000 (which is the estimate for this type of immigration in recent years) we can calculate that actual visas available for family members entering through the preference system may drop to 175,000. Since no limit can be placed on immediate relatives, the number for family reunification through the preference system could fall even lower.

These problems would carry over to individual countries because under the per country quotas, visas issued to immediate relatives and special immigrants in excess of 20,000 in a given year would be deducted from the number available for overall immigration in the following year. In addition, in the current year, visa applications for immediate relatives and special immigrants receive priority over immigrants applying through the preference system. Thus, it is conceivable that in certain years some countries may have no visas available for the preference system. Another potential problem could occur because of the 3:1 ratio for family to independent immigrants which the bill provides for. If, for example, a country issued 10,000 visas for immediate relatives one year, in order to conform to the 3:1 ratio, 5,000 of the remaining 10,000 visas would go to independent immigrants; leaving only 5,000 for family reunification through the preference system. And if, for example, that country issued 30,000 visas to immediate relatives and 2,000 to special immigrants one year, it would only have a total of 8,000 visas for the following year. This total would have to provide for immediate relatives and special immigrants first, and then divide the remainder according to the formula.

For these reasons we urge that immediate relatives and special immigrants not be included under numerical ceilings. These numerically exempt categories should not bear on the numbers allotted for family reunification. We do favor a ceiling on the preference categories similar to the present system.

D. 40,000 Visa Allotment for Mexico and Canada

The proposal to provide special treatment to contiguous countries in the allocation of visas is a wise and commendable one. It recognizes the special circumstances surrounding the demand for immigration from our neighboring countries, particularly Mexico. It is a positive step which will provide some relief against the enormous backlog which exists for Mexico in certain preferences, such as the second which has a nine year waiting period and the 5th preference which goes back to 1977. This proposal however is not a radical departure from prior immigration policy. Prior to the 1976 amendments we did not impose a per country ceiling on the Western Hemisphere. At that time average legal immigration from Mexico was around 40,000 per year, and there was not a severe backlog. This legislation merely restores the level of Mexican immigration to what it was before the 1976 changes.

E. Two-tiered Preference System

Creation of a preference system which establishes separate categories for family reunification and independent immigrants is basically a good theory, if it is aimed at eliminating competition for visas between the two and if it places emphasis on the family category. On the surface it would seem that the proposal contained in this bill would accomplish this. However, because of the inclusion of immediate family within the overall visa set-aside for family reunification, and because of the large set-aside for independents, we do not feel that it would accomplish this goal. In fact, the proposal narrows the scope of the family category by eliminating two classes of aliens from the preference system. Moreover, the restructuring of the preference system, when considered with the new changes in overall immigration ceilings and the established formula for allocation of visas, will force family members to compete for a smaller number of visas than are currently available to them.

We strongly object to the exclusion of adult unmarried sons and daughers of lawful permanent residents from the existing second preference (proposed A-2). This is totally unjustifiable and would pose a great hardship on families, since there would be no means available for sons and daughters to reunit with their lawful permanent resident parents. We also object to the eventual elimination of the 5th preference which allows siblings of adult U.S. citizens to immigrate. These two proposals would strike a very harsh blow on the concept of family. As a country which consists of many cultures, The U.S. should be sensitive to other cultures' concept of family units. Many cultures have strong, healthy ties among brothers and sisters. No one can argue that in any culture the relationship between parent and child is not a fundamental one. This relationship does not end upon the 21st birthday of the child. These two proposals completely disregard the concept of family reunification and, as such, are totally unacceptable.

Within the family reunification preference the drafters of this legislation allotted 65 percent of the visas to the (new) second preference. This may have been aimed at dealing with the tremendous backlog which exists in this category--a nine year wait for those from Mexico. However, this will not come close to remedying that problem, particularly since there is no way of knowing how many actual visas this means. Since the visas allotted to immediate relatives will be deducted from the total allowed from family reunfication, this could be 65 percent of any number. We feel, as did the majority of the Select Commission, that there should be a special provision aimed solely at eliminating existing backlogs. The Select Commission recognized that even by increasing annual numerically limited ceilings to 350,000, it would be impossible to accommodate visa applicants who have been waiting for years. Thus, they recommended the allocation of 100,000 extra visas annually for five years to try to eliminate the backlog. We think the Congress should give serious consideration to that recommendation.

We are very disappointed with the way the independent preference category is designed. It does not change much from the independent preferences contained in the existing system, except for the inclusion of the investor category which was needed. However, it does greatly increase the number of visas available to independent immigrants and changes the proportion of independent visas to those available for family reunification. This proportion cannot really be determined because there is no way of knowing how many people will apply for vias as immediate relatives, and thus no way of determining what number will be available for family reunification through the preference system.

There is no apparent need for more than the 54,000 visas now allotted for independent immigrants. Why then did the drafters feel it necessary to raise the number by so much. Presently, there is no backlog for the third preference for exceptionally skilled professionals which would be the prime recipient of visas under the proposed independent immigrant preference system. The way the new system is designed, it would result in a decrease in the actual numbers available for numerically limited family reunification. It is unjustifiable to take visas away from the family cateogry, for there is obviously great demand given the existing backlogs, to increase visas for independent immigration, for which there is no significant backlog.

We are also concerned that the proposed first preference under the independnet category would encourage immigration of foreign professionals which will lead to a brain drain on developing countries. This could have a negative effect in the long run on both the sending countries and the United States. A classic example of what could happen is seen in the case of Haiti. Many of the educated citizens of that country leave their homeland to practice there professions elsewhere. As a result the only people left are those in power and the very poor, who cannot contribute much to the technical and economical development of that country. Because of the conditions of extreme poverty and lack of opportunity, many people leave the country and try to enter the U.S. illegally in search of a better life. The U.S. should not encourage this brain drain through its immigration policies.

Looking outside of our borders for professional to occupy jobs in the U.S. is also bad for our citizens. We have many young talented individuals here who should be encouraged to pursue careers in the professions. By importing people to fill these professions we do not provide much encouragement or incentive for our own young people. This government must re-examine its priorities and realize that we should invest into the future of our talented young citizens and residents. Certainly the Administration's cutbacks on financial assistance for higher education hampers the potential for these people and perpetuates the perceived need for importing professionals.

In conclusion we are very disappointed with the proposed restructuring of the preference system. It may still be feasible to develop a two-tiered system of some sort. However, family reunification should be more greatly emphasized. And above all, immediate relatives should not be included under the numerical ceiling for family reunification.

THE H-2 PROPOSAL

A. Summary of the Proposal

The Simpson-Mazzoli bill proposed to revise the current H-2 regulations by "streamlining" the program for agricultural workers. It creates two classes of temporary labor: (1) agricultural workers and (2) all other performing temporary services.[5] An employer can petition the Department of Labor to import foreign labor if it can establish that: (1) there are not enough qualified domestic workers to perform the job requested; and (2) the employment of H-2 workers will not adversely affect the wages and working conditions of U.S. citizens who are similarly employed. Once a temporary worker is admitted under the program, he can remain in the U.S. for up to 8 months in any calendar year. Certain foreign workers may be exempted from this time limit if they were certified to work in the U.S. for a longer period of time prior to the enactment of the new legislation.

The bill also provides an expedited procedure for the procurement of agricultural workers. In this case, an employer can file a petition

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[5] The proposal eliminates a now-existing third category of logging occupations. See 20 CFR Section 655. 200, et. seq.

80 days before the date when the services are actually needed. After the employer has complied with the Department of Labor (hereinafter referred as "DOL") criteria for recruiting domestic workers, and none materialize, the Secretary of Labor must make a decision on certificatio no later than 20 days in advance of need. If certification is denied because of a determination that U.S. workers are available, and such workers are, in fact, not be found, the Secretary of labor shall issue a certification within 7 days of the date of need. If domestic workers are referred to an agricultural employer, and he contests their qualifications, the burden of proof rests with him to demonstrate this on the basis of 3 days of mandatory employment of U.S. workers.

DOL is responsible for reviewing the petitions and approving or denying the request. Employers who violate the regulations will be denied future certification for a 5-year period. The agency is also obligated to monitor the program and to report annually to Congress with respect to the certifications granted, the impact of foreign workers in the domestic labor market, and the compliance rates of employers and workers.

B. Analysis

The thrust of these recommendations is to codify existing H-2 regulations into the statute, so that the responsibilities of employers, the Department of Labor, and the Department of Justice will be clearly defined. The difficulty with the proposed legislation is that it does not address the weaknesses and problems which now exist in the H-2 program. Thus, while Messrs. Simpson and Mazzoli are to be commended for not adopting the Administration's guestworker proposal, they may nevertheless see its emergence through the backdoor provided by the H-2 program.

1. Tax Exemptions for H-2 Employers

The most glaring oversight is the fact that economic incentives for recruiting H-2 foreign workers have not been eliminated by the proposed legislation. Currently, employers who utilize the H-2 program are exempt from certain tax obligations. Neither the foreign worker nor the employer have to pay social security taxes (FICA).[6]

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[6] 26 USC Section 3121 (b)(1).

This means that an employer can save 6 percent of his costs by hiring an H-2 alien rather than an American citizen. Additionally, growers do not have to pay unemployment insurance taxes on wages paid to foreign contract labor.[7] So they can save 2 to 4 percent more on their taxable payroll. As long as these financial incentives remain for agricultural employers, they will find some way of circumventing the pre-certification requirements.

2. Certification Problems

The two-part labor market test proposed by Senator Simpson and Congressman Mazzoli is already written into the H-2 regulations. However, the bill does not statutorily mandate the use of the "adverse effect wage rate"[8] as the criteria for determining the availability of U.S. workers and the need for foreign labor. If this standard is eliminated, then what will DOL use as its replacement? By leaving the option open, the DOL may become extremely vulnerable to political pressures from agricultural interest groups, whose main concern is to keep the procedure as lax as possible. Consequently, DOL may not have the opportunity to establish effective guidelines; or, at best, the criteria it sets forth may be applied inconsistently and arbitrarily.

As it now stands, the H-2 regulations require the employer to follow domestic recruitment procedures which rely heavily on the use of state employment service offices to secure domestic workers.[9] In many cases, there is no requirement that the employer demonstrate the use of alternative means of finding U.S. workers, such as direct contact with former employees, private employment agencies, union hiring halls, crew leaders, etc. Moreover, U.S. migrant farmworkers do not use the state employment service offices, since their transient lifesyle prevents them from committing themselves to a season's work hundreds of miles away or several months in advance, on the basis of a document submitted by a stranger. Thus, employer efforts to recruit domestic agricultural workers become a mere formality or a half-hearted undertaking.

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[7] 26 USC Section 3306(c).

[8] Also known as "AEWR", it is a figure determined by DOL as the minimum wage necessary to pay foreign workers, so as to avoid depressing domestic wages.

[9] 20 CFR Section 602.10 et. seq.

Should DOL be successful in finding domestic labor, growers can still contend that the numbers are not sufficient or that they are not qualified. The Simpson-Mazzoli legislation tries to solve this problem by placing the burden of proof on the employers: he must establish that U.S. workers are not qualified by retaining them for 3 days to measure the level and quality of their job performance. However, the language of the bill fails to specify the criteria for judging competency, thus leaving the decision to the total discretion of the grower. Furthermore, the 3-day requirement can be manipulated by employers to make working conditions and production output so harsh and debilitating as to actually force domestic workers to quit their jobs. Thus, growers will be able to prove that U.S. workers are not qualified and, in fact, that there are not enough to fill the positions needed.

3. Deterrents against H-2 Abuses

The bill attempts to address employer violations of H-2 regulations by prohibiting further participation in the program for a period of 5 years. This sanction is enforced by granting DOL the authority to deny certification to the delinquent employer. However, the penalty already exists under current H-2 regulations.[10] And it has proven to be ineffective.

While control over certification is a powerful weapon against employer-violators, its usefulness is also limited; for the DOL may not want to be placed in a politically sensitive position where it can be blamed for the failure of a harvest. Even if it could withstand the political repercussions and refuse to issue a certification, the employer can obtain it elsewhere--through the Immigration and Naturalization Service (INS) or the courts.

INS regulations presently give employers the opportunity to challenge a DOL denial of certification via an administrative review. In that context, an employer can present countervailing evidence on the issue of available domestic workers.[11] Where DOL and INS reach opposite conclusions, the Immigration Service has not hesitated to reverse a Labor Department denial if employer interest were at stake.[12] On the other hand, there is no analogous right for domestic workers or labor organizations to challenge a decision granting certification. Consequently, DOL approval of certification is final.

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[10] 20 CFR Section 621.3(c) and (d); 20 CFR Section 655.200(a).

[11] 8 CFR Section 214.2(h)(3).

Even if INS were eliminated as a participant in the certification decision, growers can still resort to the courts when an administrative decision is inimical to their interests. Growers in Texas and Colorado have successfully used the judiciary to compel the admission of Mexican H-2 workers even when they refused to pay the "adverse effect wage rates" or provide other benefits under the regulations. Success has come, because employers sue at or near the area where the temporary workers are needed. The action is filed close to harvest time, when financial stakes are most sharply defined and political vulnerability is at its greatest. The employers can easily show irreparable harm in the form of massive financial losses if a harvest is not immediately underway. With the ultimate question being one of whether or not to admit the H-2 workers, the courts have but one choice, regardless of the merits of the dispute. Given the time constraints, the judiciary cannot compile a complete evidentiary record for trial; nor does it have the expertise and mechanism to decide whether, in fact, qualified U.S. workers are available.

4. Abuse of H-2 Workers

The preceding discussion has focused on the failure of H-2 regulations to protect domestic workers. Yet another dimension to the issue is the abuse of foreign workers under the program. MALDEF has repeatedly expressed its opposition to any form of a guestoworker program, whether it be the Administration's 2-year pilot project of 50,000 Mexican nationals, a revival of the old bracero program, or a temporary worker program in disguise, such as the H-2.[13] In all of these instances, violations of the rights of foreign workers and resultant discriminatory effects on Mexican Americans and other minorities have been well documented. The Simpson-Mazzoli legislation tries to respond to this concern by having DOL monitor the program and granting it the authority to take remedial action, which includes injunctive relief and specific performance of contractual obligations, to insure employer compliance with the terms and conditions of employment. However, it should not be forgotten that similar guarantees of adequate wages, decent living and working conditions, and other protections were written into past legislation and exist in the present H-2 program. But lack of enforcement has rendered the protections meaningless. And there is no assurance that the proposed legislation will be any different.

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[12] The Presidio Valley incident of 1977 is illustrative of the problem. Growers in the West Texas Valley applied for H-2 workers to harvest onions and cantaloupes. DOL denied certification when growers refused to comply with specific H-2 regulations. INS overruled the Labor Department decision and admitted some 800 Mexican nationals to work in the fields. U.S. migrants who had contracted to do the harvesting were told not to come because they were no longer needed. This decision opened the door for Mexican "braceros" to come in under the H-2 program. Since 1977, growers have introduced Mexican H-2 workers into Colorado and Arizona, as well as other parts of Texas.

5. Expansion of H-2 Program

Of foremost concern to MALDEF is the possibility that the H-2 program will be used as a backdoor approach to the revival of a bracero program. There are several revealing facts which make this a more than likely probability.

First, the use of H-2 agricultural workers has increased over the last 15 years. For example, the number of Jamaican workers certified for admission has doubled from 1965 to 1979. Ten years prior to 1977, no H-2 workers were found outside the eastern seaboard. Now H-2 workers are employed in various areas of the Southwest, such as Texas, Colorado and Arizona. Second, DOL has not been able to prevent the renewed use of Mexican labor under the auspices of the H-2 program.[14] To the contrary, it is not unusual to see Mexican nationals entering the U.S. as H.2 workers.[15] Third, the Simpson-

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[13] See Testimony of Mexican American Legal Defense and Educational Fund before the Senate Subcommittee on Immigration and Refugee Policy, Washington, D. C., October 22, 1981.

[14] See Migrant Legal Action Program, Inc., The H-2 Program: Temporary Alien Workers in U.S. Agriculture, An Analysis and Position Paper Submitted to the Select Commission on Immigration and Refugee Policy, November, 1980, pp. 11-17.

[15] See footnote 12 supra.

Mazzoli bill itself provides a foothold in the door for further expansion. Although it limits the maximum stay of an H-2 alien worker to 8 months, it also contains a grandfather clause which lifts the restrictions for those agricultural laborers who have been certified for longer periods of time prior to the enactment of this new legislation. Since many H-2 farmworkers have been certified to remain in the U.S. for up to 12 months, the extended time period may become the rule, rather than the exception

C. Conclusion

Before Congress decides to codify the H-2 regulations into the nation's laws, it should first thoroughly examine the current problems with the program to close the loopholes and tighten the regulations:

(1) The exemptions from social security and unemployment insurance taxes now given to H-2 employers should be eliminated to remove some of the economic incentives for importing foreign labor;

(2) The DOL should establish alternative guidelines (besides the "AEWR") for ascertaining the availability of domestic workers before any legislation of the H-2 program is enacted. Otherwise, it will be vulnerable to political pressures from employers interests to dilute any criteria that DOL proposes;

(3) Procedures must be established to insure good faith and aggressive recruitment of domestic workers through a variety of channels, and employers must be required to maintain detailed administrative records of their recruitment efforts which will be subject to DOL examination;

(4) Penalties other than mere denial of certification must be included to insure that chronic violators will not be able to participate in the program;

(5) INS review of a DOL denial of certification should be eliminated;

(6) Sufficient resources should be allocated to DOL enforcement mechanisms, so that the rights of H-2 workers are protected;

(7) Any effort to expand the H-2 program must be opposed. Thus, the grandfather clause allowing certain H-2 workers to extend their stay in the U.S. should be eliminated from the proposed legislation.

Finally, Congress should structure the regulations with the view of eventually abolishing the program. Given a national unemployment rate of 8.5 percent, there is no justification for its continued existence.

Political Asylum and Adjudication Procedures

A. Summary of the Recommendations

The bill provides for two types of procedures in the admission and exclusion of aliens. An alien will be summarily excluded if he does not have the documentation required to obtain entry into the United States, or if he does not have "any reasonable basis" for legal entry, or if he fails to immediately file a claim for asylum.

Where exclusion or deporation proceedings are initiated against an alien and where a legal nonimmigrant subsequently files an application for political asylum, the issues will be adjudicated before an administrative law judge (ALJ) with the right of administrative appeal to the Immigration Board. Asylum cases will be heard by specially designated administrative law judges who are trained on matters involving international relations and international law.

In addition to the asylum procedures, the process of judicial review will also undergo significant changes. There shall be no judicial review of the asylum issue, whether it arises in the context of exclusion or deporation proceedings or stems from decisions made outside of these hearings. However, the constitutional right to habeas corpus remains with the alien. Judicial review will be limited to final deportation orders dealing with issues other than asylum. The time limits imposed on the appellate procedure, where it exists, will be considerably abbreviated. A petition for review must be filed within 30 days of the date of the final deportation order. The current deadline is 6 months.[16]

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[16] Section 106(a)(1) of the Immigration and Nationality Act; 8 USC Section 1105 a (a)(1)

Finally, the Simpson-Mazzoli bill establishes an independent U.S. Immigration Board to be composed of a Chairman and 5 other members. All members will be appointed by the President with the advice and consent of the Senate.

B. Analysis

The proposed legislation represents a comprehensive effort to eliminate the complexities of the current asylum process and to remove it from the pressures and demands of U.S. foreign policy. It is a significant improvement over the Administration's recommendations to have an asylum officer hold a "non-adversarial" interview to determine the validity of the asylum claim, which prohibits the participation of the applicant's attorney. The Simpson-Mazzoli version formalizes the asylum proceedings and keeps intact minimum due process guarantees for a fair hearing. Furthermore, it calls for special training of ALJs who are designated to hear such applications, so that they will have the necessary expertise to make a reasoned judgment. MALDEF also commends the legislators for separating the administrative judiciary from the Immigration and Naturalization Service and creating an independent Immigration Board. This will insure impartiality in the adjudication process.

There are some concerns that MALDEF wishes to convey to the joint committees, however, because of problems encountered by Salvadorans and Haitians seeking political asylum.

1. Summary Exclusion

A sovereign nation has the right to determine who shall enter and who shall be excluded. But MALDEF is troubled by the summary exclusion process. Current law provides that aliens, with certain exceptions, shall be detained for further inquiry if they fail to establish clearly and beyond a doubt that they are entitled to land.[17] The proposed legislation would abolish the additinal inquiry and summarily remove the alien if he lacks the requisite entry documents or "any reasonable basis" for legal entry. What does "reasonable basis" mean? An alien may have the documents needed to secure entry; but the immigration official may choose not to accept them or may conclude that the alien does not have a "reasonable basis" for entry. The absence of some further inquiry leaves the matter to the complete discretion of the examining officer; the standard becomes a subjective one. A fairer approach would be to allow review before a final decision to exclude is made and to impose a reasonable time limit on the review and decision-making process.

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[17] Section 235(b) of the INA; 8 USC Section 1225(b).

Another concern is the use of summary exclusion against an undocumented alien who fails to submit an asylum claim. This presumes that the alien knows that he has the right to file such an application and that he can gain access to it. However, neither situation may hold true. Thus, the legislative language should be changed to impose an affirmative duty on the examining INS officer to advise the alien of his right to apply for asylum, and the officer should make the forms available to the alien.

2. Time Constraints on the Filing of the Asylum Claim

The Simpson-Mazzoli legislation provides that, if exclusion or deportation hearings are instituted against an alien, and the alien believes he is eligible for political asylum, then he must file the claim within 14 days of the date of service of the notice initiating the proceeding. Such a deadline does not exist under current law.[18] The imposition of time constraints are designed to secure expeditious determinations of asylum applications. While such a goal is commendable it should not be implemented at the expense of compromising the alien's due process rights.

The fact is that the 14-day time limit is too short. It does not take into consideration certain realities the alien must grapple with. First, the alien must find an attorney to represent him. Second, the alien needs time to gather the evidence to support his petition. Assuming that the alien does find an attorney, the 14-day filing deadli imposes an unreasonable burden on the legal representative because he will not have the time to compile data or other evidentiary material for the asylum request. The deadline should be extended to take into account these extenuating circumstances.

The bill further provides that if the alien misses the time limit for filing, he will not be able to make an application at all, unless he can present a "clear showing" of changed circumstances between the date of the Order to Show Cause and the date of the application that would result in a change on his eligibility for asylum. This same standard is used when an alien wants to re-apply after an initial denial and on a motion to re-open after an ALJ decision to deny the claim.

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[18] Section 208 of the INA; 8 USC 1158.

The standard is not realistic. The political changes in the alien's country may not be so sharply defined as to make a "clear showing." But certain indicia may exist to point out how the changes are moving in a particular direction. A more appropriate standard is a "reasonable showing by a preponderance of the evidence."

3. Elimination of Judicial Review in Asylum Cases

The proposed legislation completely abolishes the right of judicial review on all final orders relating to asylum claims. This recommendation raises our most serious objection. If the thrust of the amendments is to expedite the political asylum process, the elimination of judicial review will not facilitate this goal. The backlog problem does not exist at the appellate level, but rather, at the entry level. The 1979 Annual Report of the Immigration and Naturalization Service (the most recent year for which information is available) shows that in 1979, 249 petitions for review of deportation cases were filed in the circuit courts of appeal; 57 petitions for writs of habeas corpus and 159 declaratory judgement actions were filed in federal district courts. A total of 992,033 aliens were expelled, of which 25,896 were formally deported and 966,137 were required to leave without issuance of a deportation order.[19] In light of these statistics, there is no reasoned basis to short-circuit such a critical due process right in asylum cases.

4. Time Limit on Filing for Judicial Review

In the case of a final deportation order, a petition for review must be filed with the ciruit court of appeals within 30 days of the date of the final order. Current law provides a filing deadline of 6 months.[20]

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[19] _1979 Annual REport of the Immigration and Naturalization Service_ (Wash., D. C.), p. 5.

[20] See footnote 16.

The rationale for abbreviating the filing time for judicial review is to eliminate dilatory tactics whereby appellants file their appeals shortly before the expiration of the deadline. While 6 months may seem too long, the drastic reduction of the appeal time to 30 days is too severe. Practically speaking, the alien or his attorney is not likely to receive the notice of an order until one or two weeks after the order has been issued. Under these circumstances, the 30-day limit effectively forecloses judicial review. The alien may have to find another attorney to represent him at the appellate level. Or the attorney may find himself with no time to prepare an effective appeal.

To strike a more equitable balance between the desire to expedite the appellate process and to protect the alien's due process rights, the filing deadline should not begin to run until after the alien or his attorney has actually received the notice of decision. Then a reasonable amount of time should be given to permit legal counsel the opportunity to prepare the case for appeal.

C. Conclusion

The current state of the law places the burden of proof on the alien to establish that he meets the criteria of a "refugee":

> "...any person...who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion..."[21]

Meeting this burden can mean the difference between life and death. Given the possible consequences, all efforts must be made to assure that the alien will be given a fair and adequate opportunity to present his case. This can not be accomplished if due process is rendered impotent by the elimination of judicial review and the short-circuiting of other procedural safeguards.

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[21] Section 10(A)(42)(A) and (B) of the INA; 8 USC Section 1101 (a)(42)(A) and (B).

CONCLUSION

As we have repeatedly stated, immigration reform is a highly complex and emotional issue. It must be approached with extreme care and with recognition of today's worldwide realities. We must look towards well rounded and long range solutions, and not react with short term cures to a perceived epidemic. We must strike a delicate balance of compassion for immigrants and safeguards to our national interests.

We believe that a comprehensive approach should take into account and address several factors. First, we must accept the fact that there is a large undocumented currently residing within our borders who live in constant fear and are extremely vulnerable to exploitation. We must realize that these people will not disappear and that we must act to bring as many of these people as possible under the protections of our laws. Therefore a broadreaching legalization program is essential to immigration reform legislation.

Second, we must provide additional visas to certain countries, such as our contiguous neighbors Mexico, which have special immigration needs. Per country ceilings on immigration should take into consideration the number of visa applications received from each country.

Third, if a one-time legalization program is to be effective, there must necessarily be an increase in INS enforcement at borders and ports of entry. However, INS should apply its enforcement resources without discrimination. Currently, almost 90 percent of those resources are directed at Mexicans who make up slightly less than half of the undocumented population.

Fourth, the INS should place more emphasis on its service functions. It is as important to give people quick access to citizenship as it is to police our borders. INS data processing capabilities should be upgraded to reduce the discouragingly long wait periods for entry, certification, adjustment of status, or naturalization, which deter many people from pursuing legal immigration channels.

Fifth, to discourage the hiring of undocumented workers, existing labor laws, such as minimum wage, unemployment insurance, occupational health and safety and others, should be more vigorously enforced. This would eliminate the incentive to hire and exploit undocumented workers as a way of evading these laws.

Sixth, in order to deal with the underlying causes of the Mexican migrant flow to the United States, a combination of trade, investment and technical assistance to Mexico must compliment our immigration policy. We should work with Mexico to devise long-range economic development strategies that will create more jobs in Mexico itself.

If handled wisely, immigration policy can stimulate our economy, enrich our human resources, and expand our relations with some very important allies. If handled poorly, it can devastate parts of our economy, shatter families and bring prejudice and violence to immigrants and to Hispanic Americans alike.

Once again, we offer our assistance to the subcommittees in their work on this difficult and important issue. We thank you for this opportunity to present our views.

Senator SIMPSON. And, now Arnoldo Torres, please.

STATEMENT OF ARNOLDO S. TORRES

Mr. TORRES. For the record, my name is Arnoldo Torres. I am the executive director for the League of United Latin American Citizens, LULAC, this country's oldest and largest Hispanic organization.

I have some additional comments that I would like to add for the record by next Wednesday. I believe this is the earliest I have been able to submit my testimony in order to give Dick and his staff some time to read our comments. I was 24 hours in advance, as opposed to 2 hours.

Senator SIMPSON. And the record is open for you until what, March 7, I think—no, 10 days from this date.

Mr. TORRES. I would like to also thank the chairman for the open door policy that he has, in fact, extended to our organization and to many other Hispanic organizations. The fact that you would come to our national convention, knowing full well what you were going to get in response, is a very good indication of the interest and the commitment that you have had, to respect and listen to our perspectives on this very, very important issue.

Last year we did testify, on many, many occasions, before the House and Senate subcommittees on this matter. During these hearings, LULAC presented clearly its detailed opposition to the Simpson-Mazzoli bill, and again, strongly voices its categorical opposition to the present legislative package.

Our testimony outlines our reasons for this opposition, however, we would like to focus our initial comments on issues that greatly trouble us. It is important at this time that we also clearly emphasize for the record that this is a new year, we approach it with a new frame of mind, and we are very hopeful that we can work with your committee and committee staff, to somehow work out the differences that you have heard by some of our colleagues today, with regard to sanctions and legalization.

LULAC and the Hispanic community are, and have been firmly in support of reforming U.S. immigration and refugee policy. We have never indicated any support or interest in having an open door policy—open border policy with an unlimited migration to the United States. Despite the many times we have testified on these matters certain irresponsible proponents of this legislation have chosen to knowingly misrepresent our positions and concerns. In fact, some persons have taken upon themselves to speak for Hispanic organizations and our community, as well as to totally discount our experiences regarding discriminatory treatment. Unfortunately, that was done today, in the morning in the testimony presented by Father Ted Hesburgh.

We also were exposed to a bombardment of desperate and panic predictions and contentions, horror stories of the negative impact the undocumented were having on American society. The public was told that their economic woes were caused largely in part by the presence of undocumented workers and that if Simpson-Mazzoli was passed it would create millions of jobs.

Perhaps most disturbing was that Members of Congress, whom we always believed to be responsible Representatives, also chose to cast this impression. In doing so, these Members appear to have made a conscious effort to radically simplify the issue and appeal to the desperate emotional state of unemployed Americans. Furthermore, they choose to totally ignore the real complexities of our economic difficulties, primarily Reaganomics, and make the undocumented the scapegoat.

I would deviate from my written comments to indicate to you that INS 'apprehension records indicate that there has been a reduction in the number of apprehensions in 1982, as compared to 1981. Contrary to what everyone thinks that it is a porous border, there appears to be either an inability of the INS to do its job, or there is not as many people coming over as some would assume there is.

Also, the contention that this is a jobs bill. Small business closings have doubled, and almost tripled since 1979. Those industries that are primarily employers of the undocumented have suffered economic difficulties, and yet people are continually telling us that these undocumenteds are taking jobs away from Americans.

I would submit for the record that it is very difficult to comprehend such contentions, for when you look at the facts that the economic opportunities are drying up in this country, and that these opportunities are primarily in the labor market where the undocumented are employed the most.

The other area that concerns us in addition to the comments we present in our written testimony, is a very good issue that Senator Mathias raised today about the problems of the Third World. There is absolutely no doubt that there are significant problems in the Third World, the economic difficulties are ever worsening.

However, we do not understand the inability of this committee, of this Senate and Congress to take the issue further by recognizing that immigration is intricately tied to our foreign and international policies, and without some attention to this relationship, whether you incorporate it in this bill, or whether you introduce additional legislation to run on the same track, that deals with the international push factors, I would say that we are going to face the same difficulties we are facing now within the next 2 or 3 years, even though this legislation may pass.

There are a lot of recommendations that we make on legalization, we have made recommendations on sanctions, and I would leave you with these few thoughts.

We never introduced amendments last year in an attempt to hurt this bill. We introduced amendments for the purposes of improving the legislation, addressing our concerns, and trying to give Hispanics a reasonable chance of hope that this bill was not going to create additional difficulties for us. Those amendments were defeated virtually at every level that we submitted them.

Mr. Chairman, we have a very strong commitment to working with you, and trying to reasonably address these concerns. We would emphasize the following: that should there be an inability to somehow come to grips with our concerns and address them, that the alternatives that Hispanics then in turn have are virtually nil, except for one, and that is to work once again to defeat this legislation.

We will do all that we can to make sure that we avoid that type of confrontation and situation, but it is, in fact, a reasonable alternative that we must in fact implement if we do not, and we cannot reach some reasonable agreements.

Thank you.

Senator SIMPSON. Thank you very much.

[The prepared statement of Arnoldo S. Torres follows:]

PREPARED STATEMENT OF ARNOLD S. TORRES

LULAC, and the Hispanic community are, and have been firmly in support of reforming U.S. immigration and refugee policy. We have never indicated any support or interest in having an open door policy—open border policy with unlimited migration to the United States. Despite the many times we have testifed on these matters certain irresponsible proponents of this legislation have chosen to knowingly misrepresent our positions and concerns. In fact, some persons have taken upon themselves to speak for Hispanic organizations and our community, as well as to totally discount our experiences regarding discriminatory treatment. We also were exposed to a bombardment of desperate and panic predictions and contentions, horror stories of the negative impact the undocumented were having on American society. The public was told that their economic woes were caused largely in part by the presence of undocumented workers and that if Simpson-Mazzoli was passed it would create millions of jobs. Perhaps most disturbing was that members of Congress, whom we always believed to be responsible representatives, also chose to cast this impression. In doing so, these members appear to have made a conscious effort to radically simplify the issue and appeal to the desperate emotional state of unemployed Americans. Furthermore, they choose to totally ignore the real complexities of our economic difficulties, make the undocumented the scapegoat. Clearly, no benefits from such demagoguery and surely the debate is significantly hurt in attempting to reach some possible solutions.

In addition, we have also read with great interest of the exaggerated costs and consequences of a legalization program. One could easily be led to believe, by reading such accounts, that American society will be inundated by criminals and welfare cheats, all posed to take from our system of democracy and not willing to contribute.

It is contradictory and illogical to contend that the undocumented are taking jobs away from Americans, while at the same time on the public trough. Yet, irresponsible elements have again chosen to appeal to the most base and prejudicial tendencies of human character by indicating that foreigners are displacing and taking away benefits from American citizens. Again, we find some members of Congress all too willing to identify with this attitude and thus the effort to develop sound immigration policy is hindered.

Despite and in spite of these prevailing attitudes, LULAC has continued to present its concerns in a responsible and reasonable fashion. We have not chosen to respond to irresponsible and poor leadership with quantities of the same, rather we have attempted to take into consideration the need for effective sound public policy which would and could impact positively on the illegal immigration issue. However, it is virtually impossible for reasonable people to seriously address this matter without including the push factors and the significant role they play in population movements.

One of the major issues which the League has emphasized and attempted to have incorporated in the debate on immigration has been the international factors which contribute to refugee and undocumented flows to the U.S. The economic and political instabilities of underdeveloped and developing countries have become "push factors" which often times force people from these countries to flee for survival. Throughout the debate in the Senate, various members alluded to this reality, however, there was no effort to address these factors in the legislation. If these instabilities continue it is inconceivable that any provisions contained in S. 509 can or will deal with them. This legislation attempts to deal with legal immigration and refugees once they are at our borders or shores, or after they have entered the country. A much more logical and effective approach is to deal with the origin of the problem which is in the sending countries. Surely employer sanctions and other provisions of the bill will not stop the flows of people fleeing for their lives from El Salvador. However, a foreign policy by this country which is aimed at decreasing the level of conflict as opposed to escalating it, would go much further in having Salvadorans remain in their country. The same is true for the conditions which confront the people of Haiti fleeing to this country. We must work through our foreign policy to alleviate the problems in the sending countries for there is no other way to rationally address this complex issue of population movements.

EMPLOYER SANCTIONS AND EMPLOYMENT DISCRIMINATION

The employer sanctions provisions, Title I of the proposed Immigration Reform and Control Act of 1982 (H.R. 7357), threatens to erect additional barriers to equal employment opportunities for Hispanics. Illegal immigration in this country has long been perceived by Americans as an Hispanic phenomena. "Operation Jobs," conducted by the Immigration and Naturalization Service in April illustrates this point, Illegal Canadian and European immigrants survived "Operation Jobs" virtually unscathed, while Hispanics, and persons of color bore its wrath. The institution of employer sanctions, for the hiring of undocumented workers, promises to have the same result. Hispanics will be most notably suspected of illegal status.

As presently proposed the Immigration Reform and Control Act contains no statutory language which effectively counters the threat of increased employment discrimination, toward Hispanics, which it engenders. It simply contains report language which is not designed to prevent employment discrimination but simply report it after the fact. Further, the bill provides, in part A Section 274(a)(1)(b), that "it is unlawful to hire for employment in the United States an individual without * * *" verifying that the individual is eligible for employment, as by being a citizen or legal resident. The bill however, does not provide for any system of monitoring to ensure that all individuals, not just Hispanics are requested the requisite documentation before employment. Even assuming that figures on the occurrence of employment discrimination, or unequal treatment, become available, the absence of an institutionalized monitoring system would logically render those figures unreliable. In the interim, three years will elapse during which time Hispanics may be denied equal employment opportunities.

The potential for increased employment discrimination toward Hispanics which the bill engenders is of particular significance today, in the wake of a deprioritization of civil rights enforcement in this country. What follows is a brief exposition on the state of equal opportunity law enforcement in this nation. The conclusion to be gleaned from the following analysis is that no guarantee of prompt redress exists for those Hispanics who, as a consequence of the advent of employer sanctions, are wrongfully refused employment, or otherwise denied equal employment opportunity.

A. The state of EEO law enforcement.—The Commission on Civil Rights in its June 1982 report noted that funding and staffing cuts in the EEOC have resulted in a retardation of the EEOC's progress toward providing complainants with prompt relief, addressing class and systematic discrimination problems and eliminating inconsistent equal employment requirements.

As the table below shows, EEOC's systematic spending power is $6 million (5 percent) lower than in fiscal year 1980.

EEOC BUDGET TOTALS AND TOTALS IN CONSTANT DOLLARS: 1980–83 (PROPOSED)

[In thousands of dollars]

	Appropriation [1] (annualized)	In 1980 constant dollars
Fiscal year:		
1980	124,562	124,562
1981	137,875	126,028
1982 (budget request)	140,389	119,041
1982 (continuing resolution)	[2] 139,889	118,617
1983 (budget request)	144,937	114,536

[1] Figures represent what EEOC could spend during a whole fiscal year under each spending ceiling.

[2] This figure does not include a $4.2 million supplemental appropriation EEOC expects during the fourth quarter of fiscal year 1982 because this appropriation has not been enacted. Mary Stringer, supervisory budget analyst, EEOC, telephone interview, March 11, 1982.

As a result of spending cuts the EEOC in fiscal year 1981 cutback the number of planned class complaint investigation of broad patterns and practices of discrimination by 13 percent, and expects to keep at this lower level in fiscal year 1983.

According to the Commission's report, the EEOC plans further cutbacks in services, such as labor force data processing. Such cutbacks would restrict the EEOC's plans to include in its targets other "employers," such as unions and apprenticeship committees that have had many discrimination charges filed against them.

Because of budgetary constraints, the EEOC in fiscal year 1983 expects to approve 14 percent fewer now suits than it approved in fiscal year 1981, even though a rising complaint load indicates a greater need for litigation. The agency may also have to reduce the number of suits it actually files in fiscal year 1983.

As the table below from the Commission's June 1982 report shows, EEOC's staff resources have been declining steadily. The agency has lost 461 authorized positions since fiscal year 1980 and is currently below its authorized level. Clerical and field office attorney positions have been affected most heavily, slowing down the production of documents and work on legal cases. The EEOC plans further cutbacks in fiscal year 1983, for expert witnesses and other support services for cases in litigation. As a consequence of staff shortages the EEOC in fiscal year 1981 estimated it would take 6½ months to resolve all Title VIII complaints on hand. With yet fewer staff on hand, its present fiscal year 1982 estimate is a month longer, and its fiscal year 1983 estimate is still another month longer.

EEOC FULL-TIME, PERMANENT STAFF POSITIONS 1980–83 (PROPOSED)

	Authorized	Actual
Fiscal year:		
1980	3,777	3,433
1981	3,468	3,416
1982 (request)	3,468	([1])
1982 (continuing resolution)	3,316	([1])
1983 (request)	3,278	....

[1] EEOC failed to provide requested data on actual staffing levels. See Edward Morgan, Director, Office of Congressional Affairs, EEOC, letter to John Hope II, Acting Staff Director, U.S. Commission on Civil Rights, May 7, 1982.

Staff shortages have led the EEOC to assume a progressively more passive enforcement role. Lack of sufficient funding and staffing has diminished the agencies ability to conduct federal civil rights compliance reviews. Staff allocations have lead to an emphasis on inefficient individual complaint investigation activities, albeit at the reduced level shown.

The resulting cutbacks in the EEOC's activities targeted at systemic discrimination, inevitably places the burden on initiating enforcement action on the victims of discrimination, persons often lacking the requisite resources of familiarization with the law or with the requirements of program operations. The rights of victims who do not know how to file complaints or fear reprisal for doing so, have been left unprotected.

CONCLUSION

The employer sanctions provisions presently contained within the proposed Immigration Reform and Control Act, will only further exacerbate the existing problems the current budget reductions are creating for disadvantaged and ostracized American citizens and legal residents. The consequence of the present legislation will be to erect additional barriers for people outside the American mainstream.

It should be noted that while the present budgetary cutbacks have limited the EEOC's capacity to initiate suits, the number of national origin complaints filed with the agency have been on the increase. (See table below)

COMPLAINTS FILED WITH THE EEOC

	Total charges	National origin charges	Percent of total
Annual reports:			
1966	6,133	143	2.3
1973	77,242	12,377	16
1976	103,067	10,622	10.3
1979	79,084	7,913	10
1980	90,325	8,568	9.5
1981	94,460	9,235	9.89

Hispanic complainants comprise an overwhelming majority of the total percentage of national origin charges filed. The inability of the EEOC to adequately effectuate its mandate will have its most direct consequence on the Hispanic community, the group being now asked to bear the employment risks associated with this legislation.

LEGALIZATION—ADJUSTMENT OF STATUS PROGRAM

Legalization has been cast on many fronts as an unfair program granting amnesty to law breakers, as a blank check for "illegals" to get on the entitlement rolls, and as an unbearable strain on state and local governments. The purpose of a legalization program is at least two-fold. First of all, legalization is to allow those persons who are presently here without the benefit of documents the opportunity to apply to the Attorney General for an adjustment of their status. Secondly, the program seeks to identify or register those same persons so as to minimize the level of exploitation attendant to an undocumented status and to extend the benefits of citizenship or legal residency to those persons.

Existing immigration law prohibits the granting of U.S. residency, permanent or temporary, to persons who are likely to become public charges. The proposed legislation, S. 529, has similar restrictions for those seeking an adjustment of their status through the legalization program.

LULAC contends that any legalization which makes adjustment of status discretionary, that is within the discretion of the Attorney General of the United States or his/her representatives dooms the program from the outset. Legalization must be a right created by positive legislation, not a discretionary enfranchisement subject to political influences. To that end, LULAC asserts that positive legislation create a commission, representative of the impacted groups, which is empowered with oversight authority and the development and implementation of rules and regulations for such a program.

Initially, it should be made abundantly clear that a two tier type adjustment of status program which disables participants from both necessary and practical access to entitlement programs will perpetuate the sub-class of persons legalization is intended to eradicate. Further, dialogue now as in the past suggests that it is questionable that only those who advocate on behalf of Hispanics through the legislative process, such as LULAC, find themselves alone highlighting both the intended purpose and the benefits which flow from eradicating a sub-class whose existence is not in the best interest of the country in general nor of Hispanics in particular.

The Bureau of the Census in its 1977 report to the Select Commission on Immigration and Refugee Policy, estimated that approximately 3 to 6 million persons live and work in this country without the benefit of documents which would identify them as "legally admitted aliens." Their presence and continued entry are due to several factors, not the least of which has been an immigration policy that has conveniently fluctuated to satisfy the needs of industrial and agricultural development in this country. During times of economic prosperity when the demand for minimally skilled and unskilled labor has been significant, that need has been reflected by the absence of any reference to the so-called negative impact of illegal immigration. Conversely, during times of economic hardship, as now, a restrictionist immigration policy has prompted both the rounding up of "perceived illegals" and mass deportations. These perceived illegals may in fact be legal residents. At minimum, they are persons entitled to share the benefits of a national development they have contributed to by coming here when needed and working where needed. Conveniently, it is all too often forgotten, as this country's history documents, that Constitutional protections attach to all persons within our borders, not just to those fortunate enough to have come at the right time and place.

Political expediencies serve no real purpose other than promoting shortsighted public policy under the guise of reasoned constructive reform. Seldom do political expediencies address the real problems of disgruntled and unemployed constituencies. Restrictionist arguments also are convenient for they seek to maintain the status quo. Now as in the past, restrictionists argue that each undocumented worker displaces an American in need of work while not providing any incentive for bettering either working conditions or wages in those industries in which employment of undocumented workers predominates. The Washington Post in its August 11 editorial "Law and the Illegal" reiterates that restrictionist view and cites as well an estimate that 4 to 9 million undocumented workers are in this country. Assuming that the Post's contention was acted on and apprehension and deportation of all illegals were possible, 9 million of this country's unemployed would then have job opportunities.

Curiously, the administration in its version of the restrictionist view, argues that to legalize the undocumented workers, will give the very people whom other restrictionists and government agencies identify as taking jobs from unemployed Americans, the signal that they can now quit their jobs and go on welfare. It is absurd to argue that people who are working full time on one hand, are also robbing the Nation's welfare coffers on the other.

Conveniently forgotten are the numerous contributions made by these persons toward the national interest. Their contribution stimulates employment as well as tax revenues. To date the administration, Congressional Budget Office and restrictionist supporters have been silent on the issue of revenue impact to the federal budget. This silence too is convenient.

This revenue assessment does not purport to assess the total impact but rather supplies one aspect which heretofore has been absent.

The following tax contribution and/or payment profile per income dollar is based on an undocumented worker. We assume the following:

That there is a total of 6 million undocumented persons within this country's borders;

That of those 6 million, 80 percent are earning $4.81 per hour and 20 percent are earning $9.00 per hour;

That these persons are working;

That these persons are single and claim only one exemption;

That their employers are making the required deductions;

That these persons, who file yearly income taxes, do not itemize;

That FICA deduction is 6.7 percent of their salary; and

That withholding (Federal) is based on 1982 tax schedules.

Based on an hourly wage of $4.81, 250 work days per year, and FICA contributions at the rate of 6.7 percent an undocumented worker pays a total of $644.54 FICA per year. Further, the same undocumented worker pays, according to 1982 tax schedules, a total of $1,130.00 per year in withholding taxes. Eighty percent of the undocumented worker pool contributes by working a total of $8,517,792,000.00 in FICA and withholding taxes.

Based on an hourly wage of $9.00, 250 work days per year, and FICA contributions at the rae of 6.7 percent an undocumented worker pays a total of $1,206.00 FICA per year. Further, the same undocumented worker pays according to 1982 tax schedules, a total of $3,105.00 per year in withholding taxes.

Twenty percent of the undocumented worker pool contributes by working a total of $5,173,000,000.00 in FICA and withholding taxes.

The above tax contributions and/or payments do not include the money that is paid for goods and services in the forms of excise taxes which include but are not limited to tobacco, services, gasoline, tansportation fares, etc. In addition, State and local taxes are not included.

H-2 PROGRAM

Due to legislative compromises during the 97th Congress, the H-2 program was to be increased to 400,000 guest workers. However, the proposed H-2 expansion was to be made without adequate safeguard to protect workers and without any provisions for improving the deplorable working and housing conditions affecting migrant agricultural workers in the United States.

Our apprehension for any expansion of H-2 programs without adequate safeguards are based on the documented history affecting migrant agricultural workers, and we strongly feel that an expanded H-2 program is insensitive in light of the fact that:

Within the last 2 years, 23 persons were convicted, 22 active investigations were conducted through enforcement of anti-slavery statutes involving migrant workers;

From the lemon growers in Arizona to the asparagus fields in New Jersey, migrant workers have a life expectancy of only 49 years compared to 73 years for the average U.S. citizen;

Eighty-six percent of migrant children will not finish high school compared to the national average of 25 percent.

The median income for a migrant family of six, with children too often picking, is only $3,900/year which is less than half the government's official poverty income of $9,287/year and very far below the income of the average American family income of $22,388; and

Several hundred workers suffer pesticide poisoning every year, and data is available on the number of injuries suffered by farmworkers every year.

Any proposed expanded H-2 program without adequate safeguards belies documented evidence indicating that:

Farmworkers are the victims of poor wages, working conditions and educational opportunities. Farmworker wages are extremely low and often represent the combined efforts of an entire family, not just an individual worker. Many are deprived of social security insurance and do not receive the benefits of minimum wage increases. The infant and maternal mortality rate for farmworkers is two and half times that of the national average and they have higher mortality rates for infections and other preventable diseases. Malnutrition and severe vitamin deficiency also contribute to the deplorable health conditions of farmworkers. The Food and Drug Administration has estimated that some 800 to 1,000 field workers are killed and 80,00 to 90,000 are injured by pesticides annually.

Farmworkers face unique educational problems and have a susbtantially lower educational level than most other occupational groups in the nation. The dropout rate for migrant children is approximately 88 percent. Some of the reasons for poor educational achievement are geographical mobility, the use of child labor to supplement meager family earnings, the discriminatory practices and negative attitudes of community and school personnel, the lack of continuity in educational programs for these mobile children, and the inability of traditional school systems to recognize the need for interstate tranfer of academic credits earned by migrant students.

That such adverse conditions affect a significant number of American citizens and that it is a national problem was also documented in a *Parade* magazine article published on October 10, 1982. This article further documents the findings of studies by individuals, organizations, and church groups concerning the deplorable living and working conditions of agricultural workers in the U.S.

Disguising himself as a farmworker, the reporter found ". . . work, poor living conditions, bad food and primitive sanitation, parasites, and high incidence of diarrhea and TB." The reporter also discovered that " . . . he needed to start work at 7 a.m., battle maggots, labor in waterlogged and squelching mud-water, carry 33 buckets of peppers weighing 12 lbs., and work to exhaustion to earn minimum wage ($3.35/hr).

The reporter went on to document that other migrant camps revealed squalor and conditions worse than the slums in several U.S. cities. He saw couples with young children living in wooden fire traps without fire extinguishers, hoses, nor water sources. He stayed in sheds used as migrant housing, slept on bug infested mattresses topping metal frames erected on cinder blocks.

Though the perception that migrant farmworkers are predominantly Hispanic is true, persons of all ethnic heritages fill the ranks of this highly exploited, yet nonetheless, human, workforce. Recent studies indicate that Hispanic persons comprise approximately 50 to 55 percent of the farm labor force, blacks 30 percent and white and others 15 to 20 percent. We assert that a case on the historical and current living and working conditions of these workers and their families must be made on their behalf during committee mark-up hearings on the H-2 provisions.

These deplorable documented living and working conditions dramatize a need for immediate corrective action prior to subjecting additional workers to such conditions.

Although we advocate non-expansion of any H-2 program, at a minimum we strongly urge that Congress actively correct the enumerated deplorable conditions by:

(A) Calling upon DOL to investigate the conditions of labor camps in the U.S.;

(B) Direct an immediate vigorous enforcement of existing labor laws in cooperation with the U.S. Department of Justice;

(C) Direct DOL to report its findings to the appropriate congressional committees; and

(D) Clarify how the annual appropriation contained in the H-2 provisions will be expended. The bill indicates that these monies will be spent on (a) recruiting domestic workers and (b) monitoring terms and conditions of their employment. We would like to have emphasized the need to have these monies either increased or the majority of them targeted to enforcing the laws which are to protect the H-2 workers and attempt to insure that they will have adequate housing, working conditions and general treatment.

Perhaps more upsetting than any other aspect of this debate is the tenor in which discussion on the H-2 program and its association to the legalization program is made. In the past, Senators have stated their interest and concern that whatever be done on any bill must allow for foreign workers to continue to enter and work in the U.S. While many in both chambers of Congress would discuss the need to keep these immigrants and foreigners out they are fairly adamant in their concern and comments to let them in if they are going to work. It seems inconsequential that in most cases these same workers will be working for cheap wages and substandard working conditions. It is this attitude by our representatives in Congress which best illustrates their insensitivity toward our community. It is also difficult to understand that throughout the debate last year on S. 2222, the Senators' major interest was to control and stop the flow of people to this country, however, when the issue of cheap labor was raised there was every effort made to insure that foreign workers were allowed to enter but not remain as citizens.

FAMILY REUNIFICATION

We are all aware of the many complex controversies surrounding alterations in the categories of immigrants, commonly known as the preference system. Regardless of what our views may be we all are in agreement that family and non-family categories must be clarified. The Select Commission on Immigration and Refugee Policy found that the mixing of family and non-family groups had created confusion and inequity and that in order to correct this, these two would have to have separate immigrant channels ". . . to enable U.S. immigration policy to serve and support the goals of family reunification and independent immigration in a more flexible and equitable manner than is possible under the current single-channel system."

A review of the current preference system reflects a significant backlog of immigration applicants. We have found that it is not uncommon to have some applicants waiting as long as 12 years. The news magazine, *U.S. News* and *World Report* found (in an April, 1982 edition), that backlogs in three regional offices of the Immigration and Naturalization Service (INS), often times were up to seven years with many applications being misplaced or lost.

The preference system establishes priorities on who shall be allowed to immigrate. Due to the major backlogs occurring in family member categories (1,2,4,5) we find that the practical impacts of this system allow those in a lower preference category (employment—3 and 6) to emigrate to the U.S. before family members. In addition, this situation has encouraged illegal immigration for family members who find the delay too difficult to continue and enter the U.S. illegally. We are unaware of the numbers, however, it has been the experience of our community. Unfortunately, we have found that this practical consequence of administrative breakdown has gone largely ignored.

Based on this situation we would recommend that remedial legislation be introduced and passed by Congress to clear up the existing backlogs. Also, we would urge that it be a matter of policy to establish a reasonable time period for which family member applicants could expect to wait to be issued a visa number.

EXHIBIT I.—PROPOSED IMMIGRATION ADMISSIONS SYSTEM

Category I—Family reunification		Category II—Independent immigration		
Immediate relatives of U.S. citizens [1]	Other close relatives [1]	Special immigrants [2]	Immigrants with special qualifications [2]	Other independent immigrants [3]
Spouses	Group I [1]	Persons who lost U.S. citizenship	Immigrants of exceptional merit	Other qualified immigrants.
Unmarried sons and daughters	Spouses, minor unmarried children of permanent resident aliens.	Ministers of religion	Investors.	
Parents of adult U.S. citizens	Group II	Former employees of U.S. government.		
Grandparents of adult U.S. citizens	Adult unmarried sons and daughters of permanent resident aliens.			
	Married sons and daughters of U.S. citizens			
	Brothers and sisters of adult U.S. citizens			
	Parents (over age 60 whose children all live in the United States) of permanent resident aliens.			

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[1] Unused visa numbers may be used in the highest category with unmet demand.
[2] No per-country ceilings applied.
[3] Per-country ceilings applied.

In considering reform of the present preference system, we would be more favorable to supporting the Select Commission's proposed admissions systems (Exhibit 1) with some changes. The objectives of any new system should be to give the reunification of the immediate family the highest priority. This would include spouses, unmarried sons and daughters as first preference not subject to quota limitation as well as spouses and unmarried children of permanent residents.

The following preference group should then follow with a numerical ceiling. There would be no deviation from these preferences which would consist of (A) Brother and sisters of U.S. citizens and permanent resident aliens, (B) Unmarried sons and daughters of permanent resident aliens, (C) Married sons and daughters (spouses) and minor children of U.S. citizens. We would emphasize that out-of-wedlock and parents of minor U.S. citizens also be included in the preference categories for to omit them would be an obvious contradiction of the family reunification intent of U.S. immigration policy.

We view elimination of the present fifth preference (married sons and daughters of U.S. citizens) not a viable consideration at this time. However, we would seriously consider its having a lower preference after better assessing the potential success of a legalization program. With regards to the proposed independent immigrant category, we are concerned with those problems which would be created for sending underdeveloped and/or developing countries, by encouraging their highly trained or professionals to emigrate to the U.S. We must proceed carefully with attention given to this concern by such countries. We must not take away that resource which is so coveted by these governments attempting to remedy their problems. We would further support a refugee category of 50,000 annually with the flexibility to adjust the number upwards without having it count against normal flows. In addition, we would be interested in discussing the concept of not having per country ceilings and in its place a national annual quota for legal immigration.

Economists and labor union representatives who have followed this immigration debate have indicated their strong reservations as to the impact immigrants and undocumented workers have on the U.S. labor market. We share some of that concern but we would caution that no substantive actions take place based on extremely limited data assessing this impact. We would recommend that we begin to better analyze the effects of legal immigrants and undocumented workers on the U.S. economy, to assess how best to plan for such effects and prepare a plan to address whatever issues may arise. However, in the area of labor certification we would oppose any relaxation of the standards utilized to insure that domestic labor is not adversely affected. We would support efforts to streamline the process so as to remove unnecessary and cumbersome procedures, reduce fraud, and excessive costs. A valid job offer or opportunities for employment should be retained. A key improvement in the labor certification process would be expansion of the labor market assessments of sufficient and insufficient labor supplies. Also, this expansion must be accompanied by a letter analysis of whether shortages are caused by employer manipulations or labor market dynamics.

It has been suggested throughout this debate process that we give thought to utilizing a point system for determining who should be given priority to enter the country under the independent category. Presently, we would oppose any proposal of this nature for we view it as a contradiction to the spirit of U.S. immigration history which is based on the concept of opportunity and humaneness. A point system would discriminate against those at the lower end of the socio-economic scale, many of which are responsible for the greatness of this country. We feel a point system would result in discrimination against people of color while favoring the Anglo-Saxon of Europe.

In closing, it is imperative that we have a flexible preference system which can be adjusted when necessary. Such alterations would and should come about from immigrant flows due to world and hemispheric conditions. A mechanism involving Congress and the Executive branch should be established which would allow on-going analysis of population movements and periodic assessments of U.S. policy to address such occurrences. We would emphasize that any changes should be based on the merits of the circumstances and not on political motivations. Thus, the design of such a mechanism is extremely important and its integrity must be protected.

Thank you.

Senator SIMPSON. I hear you. I have listened for 4 years, and so let me share just some of my serious concerns.

We have interesting mail that comes to the subcommittee from American Hispanics, which says get off your butt and do something. The Hispanic community is telling us that, the American Hispanic community, as are other citizens in the United States, all citizens of the United States.

You say that you speak for them, and yet I speak with other members of the Hispanic community who are not involved with the organized groups, just like when I deal with veterans, I deal with the executive directors of veterans, and then when I go talk to veterans I find somewhat different ideas.

So, does this Hispanic community, the citizens and legal residents, in the mainstream, do they want something done about illegal immigration, do they see it as damaging to the community? I would ask you that.

Mr. Avila. Well, the Hispanic community is indeed a diverse community like any other community. However, in my travels, in my discussions with community organizations, with our staff attorneys in our regional offices, we find that there is very great support for opposing employer sanctions. There is a concern about any immigration policy, and we are concerned with improving the inequities which are involved or inherent in immigration policy, so yes, the Hispanic community is interested in immigration reform, but the manner in which it is being done by this subcommittee, and contemplated by Congress, is the wrong means, and that, in our travels, in our communications with various community groups, and the letters that we have received, we find that there is very great support against this bill.

Senator Simpson. Let me share with you that in the course of time that I have been working on the issue, there are elements of this bill which are solely there because of the response of the Hispanic community in the United States: the legalization, the increased quota from Mexico, the increased focus on the second preference, all of those things were tailored for that purpose, to respond to the Hispanic community. You are aware of that, I believe. Is that not so?

Mr. Avila. We are aware that there are provisions, concepts of the bill that we are in favor of. We differ, however, on the extent of the comprehensiveness, the numerical limitations, et cetera.

Senator Simpson. OK. But then do you really believe that these, what I see to be very fine reforms, or suggested reforms, are going to be realistically enacted separate from the comprehensive package, which would include enforcement provisions? Do you really believe that?

Mr. Avila. Well, the way you framed your question, you are giving us really a very impossible decision to make with respect to a choice.

Now, we are in favor of a very comprehensive immigration package, and that comprehensive immigration package should take into account the international ramifications, discussions with Mexico, discussions with other Latin American countries, et cetera.

Yes; we are in favor of that. With respect to specifically employer sanctions, no, we are not.

Senator Simpson. And you carefully monitored that debate.

Arnold was here, you have watched the swirl of it, as it gathers its forces, and you see that, and you see that is happening that there are attempts to water down legalization.

Let me tell you, go look at the Congressional Record on the debate in the U.S. Senate, as to what was attempted to do with legalization, for example, that it was a reward for those who are illegal, those who have broken the law. You know, that is an attractive argument. I managed to beat that back into the bushes each time, but it gets a lot more currency all the time, and so when you say that you want legalization, but these other things do not come, I think you have to listen particularly to what Father Ted Hesburgh said this morning. There is a man of credential and currency on the issue, I can only share with you that that is where we are coming to the issue of there ever being any legalization. I would love to have legalization very much. But there will be no legalization without employers' sanctions, and without the form of an identifier, which is not a national identifier card, and which is not an internal passport. It is specifically stated in the law that it is not.

Mr. TORRES. Well, the initial question that you asked about the Hispanic community, the first sentence of my third paragraph, and I indicated, I read it out loud, "LULAC and the Hispanic community are and have been firmly in support"——

Senator SIMPSON. Excuse me, Arnold, I am supposed to be in seven places. There is only one of me.

Go ahead, I wanted to hear that.

Mr. TORRES. We wrote that, "LULAC and the Hispanic community are and have been firmly in support of reforming U.S. immigration and refugee policy."

Perhaps I should have firmly underlined this passage. We have always been in support of improving immigration refugee policy in this country.

The second sentence that follows says that we have never once "supported, indicated, encouraged any policy that would have an open border."

So, I think you are right, there is a strong support from Hispanics, and I do not think there is one organization up here that would say that there is not support within our community to make sure that immigration laws are enforced and carefully reformed.

However, it is the manner in which it is going about. We do not, under any circumstances, feel that there should not be any enforcement of immigration law.

Again, we have never once advocated that perspective, and we have never once come before any committee and made public comments, or private comments, that deportation should cease. We understand that that is the law. We are simply concerned with the way the law is implemented, and this is a point that we tried to make over and over and over again.

So, we are not at odds with the letters that you receive from our community saying that they want some of these undocumenteds deported, that they are taking the jobs away from some of the Hispanic legal residents, citizens. We recognize that, and we have acknowledged it, and we have tried to make sure that that has come through loud and clear.

But we are concerned as people who are supposed to understand the law, because that is what we are paid to do, to understand and be able to assess in detail the ramifications and the consequences of the implementation of this law, and in that regard, I think that if we were to inform these same people as to the consequences of this law, perhaps they would have a different tune to sing when they write a letter to you.

So, we do not indicate that you should have a bill that does not have enforcement. We do not suggest that you have a bill that only has legalization, and the legalization program that we draft on our own.

What we are saying is that you must pass good public policy. This bill, unfortunately, has not met that standard. Hispanics are not one dimensional people. The representatives that you have before you are not one dimensional, in our assessments. We are concerned, as you are, the mainstream America, with good public policy and that is the standard that we try to reach and meet consistently. Unfortunately, this bill does not meet this standard.

But we are very hopeful, and we know that with the intelligence that you have exhibited on this issue, that we will be able to reach some agreements on these things this year, and perhaps as a result of those agreements, as a result of this dialog that we have always had with you, perhaps it will get to a point where we, in fact, can somehow accept this legislation.

We are very hopeful that that will come about.

Senator SIMPSON. So am I, I assure you.

I guess, in my particular line of work, I learned something long ago, which I know that many of the constituent groups that hammered in my old bald head have never learned, and that is, I learned how to take a crumb when you cannot get a loaf, and I also learned how to compromise an issue without compromising myself. OK.

So, here we are with a statement, and this troubles me, I cannot follow this argument as a logical person. In essence, you cannot support the legislation because of what might happen to it.

How then can you ever get, or how can you keep it fair, and how can you keep it reasonable. How are you going to keep whatever balance and fairness and measured reason in it, if no one at this stage of the proceedings is going to support it when it is fair and reasonable or balanced, or at least perceived as such?

And, obviously, your fear will become more pronounced as it goes on down the pike? Interesting, I have trouble with that.

Mr. CANO. Senator, if I may, I am confused.

Senator SIMPSON. Yes; so am I.

Mr. CANO. I came here to supposedly raise the conscious level of the Congress as to the concerns of the Hispanic community. I surely do not infer that the American GI forum speaks for the entire Hispanic community, there are many of us out there, and the GI forum is but a small segment. But I do recognize that in the 34 years that we have been in existence, we are the ones that have raised the conscious level of that community.

So, for those folks out in that community, I think you have here the conduits of legalization that can raise that conscious level in the community, and loudly express to you, and to other folks here, that are the decisionmakers, the climate. The climate we talk about becomes a crunch, and I think what we come here is not with a feeling that we come here to defeat a bill, or to arrive at a just cause in legislation that will resolve our problem, but to raise the conscious level of the Congress for an equitable system. These are the problems.

But let me assure you, Senator, that you see here, I think, a mechanism to raise the conscious level of the community, we have done it over the years, we have fought hard, and I think what you see is a fear, and let me tell you that I assure you that our communities do not know that fear, and I can pretty well tell you that folks in the little towns where we exist, do not know what the Congress is doing, or what the White House is doing, or to a very minimum extent, but it is our job to raise our conscious level, and I think that from our standpoint, we will observe, and at the right time, if it is going to become a crunch, then my job becomes that of raising the conscious level of the community in outcry, and I think that is what we are here for.

Senator SIMPSON. Well, I agree, and you have done that beautifully in this country.

Just one other thing I want to refer to. An interesting theme I hear among the panel today, that suddenly this is a jobs bill. I have never said it is a jobs bill. The Select Commission on Immigration and Refugee Policy has never described it as that.

It is a bill to do one thing, one nonmystical thing, and that is to exercise the first duty of the sovereign Nation, and that is to control our borders. Bang, that is it. You can read in anything more you wish, and people do, and will, but that is the issue. Nothing more mystical than that. It is not a jobs bill, and it has never been referred to you, by me, as a jobs bill.

The testimony of Father Hesburgh, I think, was stated so well that employer sanctions are designated for one reason, and for one reason only, to withdraw the magnet which draws people to this country. Nothing more was ever said than that.

And then this one, and I have trouble with this one, so at least I will have them all on the table for you.

You state in varied forms that civil war and political instability and social injustice are some of the main reasons for motivations for this flow of illegal immigration to the United States.

I believe that was the statement. Because employer sanctions then would not work, because most of the illegal aliens did not come here for economic reasons, but came for those reasons.

So, I say to you, especially I think, to you, Joaquin, because you deal and work with the Mexican American Legal and Education Defense Fund, if we have the estimated 45 or 50 percent of the undocumented workforce coming from Mexico, are you attributing these conditions to that country?

Mr. AVILA. There are a variety of reasons why persons choose to come to this country. Clearly, no one has taken a survey of all the undocumented persons coming into this country, to determine the relative degree of influence each of those factors have.

Clearly, a significant reason, just from our own experience, not based on any surveys, is more than economic. In addition, it is not just persons from Mexico that are coming into this country. We have persons coming in from Central America that are in fact fleeing the country because of the political situation which exist in those countries.

So there are a variety of reasons why persons come into this country, and even if employer sanctions were to be viewed as a mechanism for ferreting out the undocumented population, we recognize that the country has a right as a sovereign to police its borders, and we feel that any enforcement action should be limited to the borders, not in our neighborhoods, and not in our work places.

Senator SIMPSON. I understand that, but my question goes unattended.

You state your testimony says, the question is one of life or death, and people will choose life over death, or torture, even if it means leaving home, and all that is familiar and dear to them. But we are talking about illegal and undocumented workers. We are not talking about those who are refugees, who are fleeing persecution.

Thus, I am saying to you, 45 to 50 percent of the illegal and undocumented flow are coming from Mexico, are you suggesting that they are being driven here by civil war, political instability, or social injustice? That is my question.

Mr. AVILA. Part of it is political instability. Part of it may be economic. And for whatever reason they come here, they will become part of the workforce.

What we are saying in our testimony is that there are a variety of conditions or reasons why persons come to this country. Some of it is political persecution, and some of it is because of economic instability in various countries. And we feel that the way this bill is drafted, it is simply not going to accomplish the purpose which you seek in implementing this bill. It is going to have very disastrous consequences, and for that reason we oppose the bill.

Senator SIMPSON. Let me ask another question, because it has to do with our tailoring or adjusting or amending process.

When you mention that the employer, when asking everyone for an ID, or mentioning if he does not he will be liable not only for a $500 fine, but also, you are aware, I know, that if the employer does not ask, he is liable for the $500 fine, plus the liability for discrimination under title VII of the Civil Rights Act, which prohibits discrimination in any employment hiring practice.

Now, do you believe that that will help to avoid employment discrimination, that the fact, the $500 fine, and that liability, prospective liability of the civil rights, is that helpful to you in what you are seeking to accomplish?

Mr. AVILA. It will not completely address the problem, because for one thing the fines that are levied against the employers can simply become costs of doing business.

Second, title VII does not cover all employment situations, and for that reason it is insufficient to address the kinds of problems that we are going to be encountering.

Senator SIMPSON. If that is not a protection to you I am surprised because it was put in solely as, a result, you know, because of the recommendations from you. If I threw that overboard, I could get the U. S. Chamber on board, you see?

Mr. AVILA. Senator, you are misconstruing my statements. My statement is not a complete solution. It is not going to completely address the problems that we fear. It is not a comprehensive solution to the issue of employer sanctions.

The reality is, that when brown persons, or Spanish-speaking persons go for employment, they are going to be queried more than their Anglo counterparts. That is the reality, and that is what we are trying to impress upon you.

Senator SIMPSON. You have impressed it upon me, that is why we require them to ask for identification not only from those who "look foreign" but baldheaded, skinny guys like Simpson, too.

Mr. TORRES. Senator, you have raised three points that I would like to respond to as briefly as I can because I know that you have to leave.

With regards to the jobs issue, we have never indicated that you have made those contentions, but if we look in the Congressional Record, I forget the exact date, but your colleague and House counterpart on this bill, Mr. Mazzoli, did indicate, with an insertion into the Congressional Record, that this bill was to pass at least an estimated 2 million jobs would.

Not only has Mr. Mazzoli done that, but you are extremely well aware of the outlandish contentions that were being made, on the Senate floor during the debate last year in which these same statements were being asserted, that in fact this was a jobs bill, and it was going to create jobs.

This is what is of major concern to us, that is what we feel must be dispelled, and we certainly look to you, because of the consistency that you have had to indicate that it is not a jobs bill. It is, in fact, an immigration reform legislation, and it is not going to be the panacea to the economic woes that we suffer from at this time.

Your second point, we have—in the last two years, we have emphasized the issue of the push factors, the international reasons as to why people come here.

I would say, with regards to Mexico, since you make the point that 40 to 50 percent of the undocumented are from Mexico, that clearly there is significant social, political instability. The inability to address their economic problems, as evidenced by the loans that the U.S. banks are making, is a good example that there is a need to have some economic freedom.

With regards to the other countries, I had the pleasure, to some extent, of traveling to El Salvador, and seeing the conditions in that country.

In fact, employing legal residents of the United States who are from El Salvador, who came here because of the political difficulty, and the fact that the political difficulty created economic problems, they were not able to have economic subsistence, they were not able to make a living. So there were two reasons.

One was the concern about political oppression, and the other one was the consequence of that fear, and the economic problems the political instability is creating.

The last point about the issue with this one phrase and provision that you talk about. We submitted some amendments regarding employer sanctions to this subcommittee for consideration. The amendment that you talk about is an amendment that we think is important to keep, but it should not be kept simply to support, or to try to bring in the Chamber of Commerce, or be repealed to try to get the Chamber of Commerce support.

We had seen throughout this debate an inordinate amount of interest in trying to accommodate employers' concerns, as opposed to trying to accommodate the potential discriminees' concerns, and I think that is where we are coming from on this issue.

There are many things that we would like to suggest, and have suggested in the past, that we believe can be done to minimize the discriminatory implications of sanctions.

But it is absolutely imperative that you understand that regardless of what is done, sanctions is an inherent discriminatory provision against Hispanics, and the best example of this is the fact of your apprehension records.

The INS indicated that 91 percent, 90 percent and 90 percent in 1982 to 1980, of the apprehensions of undocumented were Mexicans. Only 40 to 50 percent come over illegally, yet 90 to 91 percent are Mexicans. Clearly, when the INS goes into work places, or on the border, regardless of what borders, they are questioning and arresting people because of their physical and linguistic characteristics.

Clearly, this is the basis on which employers sanctions have been developed and will be implemented.

Senator SIMPSON. I understand that, and I would just add one other fragment to it, that most apprehensions occur on the border, where most Mexicans enter, and that is the way that is. That is reality. There are so many realities in the situation that statistics sometimes fail reality.

Mr. TORRES. I think if you look at those statistics, too, and just to be honest about the reality, because I appreciate your response, is that you will see in your statistics that there has been an increase in detentions and apprehensions in the interior, because there has been a concerted policy initiative by the INS to emphasize more targeted employment surveys in the interior.

So, I think your statistics would also bear out the fact that there is an increase occurring, not just along the borders, but more importantly, in the interior spots that Mr. Avila has indicated.

Senator SIMPSON. Apprehensions are up all along the border, true, the list is up 80 percent.

Well, I guess it will continue to churn on. I have a very genuine feeling in my gut that if we do nothing, that the discrimination that will occur to the Hispanics will be unmatched, in place of what could occur and should occur, if this legislation is enacted, that is a sincerely held view. It is not an obsession, because I know my colleagues, I know how they voted, it was 80 to 19. I remember that. Had it been voted on in the House, it would have passed by 150 votes, you are all aware of that, everyone at that table is well aware of that.

And it is my humble opinion that if we do nothing, there will be the magnificent congressional knee-jerking reaction, and that will be simply to add more money to the INS, more money to the border patrol, investigate possible use of the military, because it is such a huge border, and all that stuff. I know you are thinking, oh, Lord, he has pulled his old bag of tricks out. That is not it at all.

I really do believe that then you will have no intrusions in the workplace, you will have more operation, whatever it may be called, Operation Peacekeeper then, or something like that. But it will be an extraordinary adventure, and intrusions and searches and sweeps, and finally the employer who has been busted a number of times is going to say I will never go through that again, I will never hire another person who looks foreign. And I think that that is something you should carefully consider as we grapple and grapple and grapple on with.

There is a seminar in Wingspread, Wis., in April, and I hope you will be there, because I am going to be there. They have asked me to come. It will be a seminar of Hispanics, those who favor this legislation and employer sanctions, and identifies as being the very essence of the reform needed, and those who share your view, and do not. I have been invited, and it would be fascinating for me to hear how your community, that you say you speak for, has some very able advocates on the other side, and I want to hear that, and I am looking forward to it. It will be helpful for me.

Thank you very much. I appreciate your being here.

Mr. TORRES. Thank you, sir.

Senator SIMPSON. The next panel, and I do apologize, we are running a bit behind.

Norman Kee, the chairman of the United States—Asia Institute; Althea Simmons, the director of the Washington Bureau of the National Association of Colored People; and Dr. Mark Rosenzweig, professor of the University of Minnesota; and George Zachariah, Indian-American Forum for Political Education.

We will take a 2 minute break for the convenience of the chairman.

[Short recess.]

Senator SIMPSON. Well, thank you for your patience, and I hope I have not discommoded your day too much. We will accelerate our activity a bit. We will follow the course of the agenda there, so that would mean Mr. Kee, please, and again, I, of necessity, must limit your oral testimony to 5 minutes, but will certainly add in the record anything that you wish, and the record is held open for 10 days.

Mr. Kee?

STATEMENTS OF A PANEL CONSISTING OF NORMAN KEE, CHAIRMAN, IMMIGRATION AND REFUGEE POLICY TASK FORCE OF THE UNITED STATES-ASIA INSTITUTE; ALTHEA SIMMONS, DIRECTOR, WASHINGTON BUREAU, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; DR. MARK R. ROZENZWEIG, PROFESSOR, UNIVERSITY OF MINNESOTA: AND DR. GEORGE ZACHARIAH, INDIAN-AMERICAN FORUM FOR POLITICAL EDUCATION

Mr. KEE. Thank you.

Mr. Chairman, members of the Senate Subcommittee on Immigration and Refugee Policy, I want to thank you for the invitation to testify before the subcommittee on the immigration reform bill which you plan to introduce to the Senate this session of Congress. It is gratifying that the subcommittee is sensitive to the views of the Asian-Americans, and we welcome this opportunity to express our concerns.

During the last session of Congress, you no doubt have learned that the Asian-American community was deeply concerned about the proposed immigration laws as they affect both illegal and legal immigration.

LEGALIZATION AND EMPLOYER'S SANCTIONS

We are anxious to see Congress make a strong commitment to solve the legal, economic, and social problems which are inherent in any proposal for broad-based legalization coupled with employers' sanctions.

There is a diversity of opinion in our community as to whether the employers' sanctions provision proposed in your bill is a necessary tradeoff for a legalization program.

However, there is unanimity that any employers' sanctions should be inherently and absolutely free from discrimination.

ADJUSTMENT OF STATUS

As I have previously testified last year, I believe your Committee has overreacted in imposing harsh restrictions against adjustment of status, particularly in the case of students. We believe that more consideration should be given in adjustment of status cases to family reunification as well as to the national interest in developing a pool of highly trained engineers and scientists.

PREFERENCE SYSTEM

During the last session of Congress, over 100,000 signatures and 2,000 letters of Asian-Americans were sent to your committee concerning the preference system as proposed in the Senate bill. Foremost of their concerns was your committee's proposal to eliminate the brother sister preference or fifth preference. When the bill went to the full Senate vote during the last session of Congress, 41 Senators voted to continue the brother-sister preference.

On the House of Representatives' side, the original bill submitted by Representative Mazzoli was amended by the House Judiciary Committee which saw fit to replace the entire section on preferences in the original bill and to submit in its place the preference system under existing law. The House bill submitted in this session contains preference provisions as passed by the House Judiciary Committee.

The present preference system does work. The February 1983 Visa Bulletin issued by the State Department shows that the waiting time for most preference categories for virtually every country has been reduced to a reasonable period. The family categories, with a few exceptions, indicate waiting periods which range from zero to 19 months, counting from the time that petitions are submitted.

The present preference system is not perfect by any means. The serious backlog for family categories are in three areas—Mexico, Philippines, and Hong Kong. In the case of Hong Kong, the reason for the backlog is the low annual limit of 600 under the subquota system. There has been an amendment submitted in the House, which proposes a larger limit of 3,000, and we strongly support such a measure. We also support special legislation which would cut down waiting time for families in all other countries.

In this time of economic hardship for many Americans, we feel that Congress should take the tried and tested approach—to build and improve upon the present preference system. Investors and other independent categories may be added or grafted into the present system. The preference system in your bill is revolutionary in its concept, and in my opinion, difficult to implement. Therefore, we propose that your committee, in its forthcoming deliberations, approach the preference system with these factors in mind.

Thank you.

Senator SIMPSON. Thank you very much, Mr. Kee.

And now, Althea Simmons.

STATEMENT OF ALTHEA SIMMONS

Ms. SIMMONS. Thank you, Mr. Chairman.

May I first commend the chairman for his leadership and persistence in trying to get a bill passed, in trying to do something about the immigration laws that NAACP has been concerned about since 1952.

My name is Althea T. L. Simmons. I am director of the Washington Bureau of the NAACP. I do appreciate this opportunity to present the association's views.

The NAACP has been a leading opponent of racial discrimination since its founding 74 years ago. We believe the subject matter of this hearing relates, at least in part, to the question of racial discrimination.

Let me say that there are several issues that I would like to speak to briefly.

We support employers' sanctions, and amnesty. We oppose the creation of the U.S. Immigration Board, and Immigration Judge System, we oppose the expansion of the temporary worker program, and we have grave reservations concerning the asylum provisions.

UNDOCUMENTED WORKERS

We are concerned about the impact of undocumented workers on other disadvantaged U.S. workers. At a time when black unemployment is more than 20 percent, and black youth unemployment is up almost 50 percent, and continues to escalate, undocumented workers have a disparate impact on blacks, when you take a look 20 years back, black unemployment has always been double the unemployment figures of the white population.

Employers who hire one of the 12 million unemployed citizens of this country must comply with minimum wage requirements, fair labor standards, and other Federal laws. An employee would have rights regarding hours, working conditions, and salaries.

On the other hand, employees who are undocumented workers, are really at the mercy, shall we say, of the employer. They stand a greater chance of being exploited.

AMNESTY

Where amnesty is concerned, we have grave reservations regarding the Grassley amendment adopted during Senate consideration of S. 2222, which moved the date from January 1, 1978 to January 1, 1977, the date by which illegal aliens must have entered the United States, to become eligible for permanent resident status under the amnesty provisions.

NAACP is also concerned about the independence of the adjudication process, because with the change in the bill, from a Presidentially appointed-Senate confirmed board, to hear appeals, the board would serve at the behest of the Attorney General. This gives us grave concern.

We think, as a matter of fact, that there is a need for a fully independent arbitrator, particularly in asylum decisions, where there are substantial foreign policy considerations involved, and where the State Department's role is often dispositive of the outcome.

NAACP is also concerned about the court-stripping provision which eliminates all appeals as a matter of right. We oppose the expansion of the H-2 temporary worker program. We still remember the old Bracero program, and it is our view that there is an ample supply of workers in our country right now with 12 million unemployed American citizens idle, and we believe that too many workers create unemployment for the workers and unemployment costs for the Government.

Until all of the unemployed are gainfully employed, the NAACP opposes an expansion of the H–2 program.

Mr. Chairman, I am a native-born Louisianian, and as such I grew up with the word "lagniappe," which meant something extra. Let me throw in something extra, and that is about the Haitian refugees.

We have raised this concern each time we have appeared before you, because the Haitian refugees are being treated differently from other refugees. We certainly hope that in consideration of this bill, that some provisions would be made to insure that persons who want to come to our shores, and we do believe that there is a lot of merit in having persons of other races to come to our shores, are here on an equal and equitable basis. The NAACP believes that if that is done, we can do something about trying to get a system of immigration policy that would do this country proud. Again I want to commend you for having taken this gigantic step, because I know it will not be easy, but I do believe that you will get a measure passed.

Thank you.

[The prepared statement of Althea Simmons follows:]

PREPARED STATEMENT OF ALTHEA T. L. SIMMONS

MR. CHAIRMAN and Members of the Committee, I am Althea T. L. Simmons, Director of the Washington Bureau of the NAACP. I appreciate this opportunity to testify today on the important matter of immigration reform.

The NAACP has been a leading opponent of racial discrimination since its founding 74 years ago. The subject matter of this hearing relates, at least in part, to the question of racial discrimination.

Before addressing specific provisions of proposed immigration reform, I would like to outline the Association's general position on immigration. As an organization we are committed to working for the removal of all barriers of racial discrimination through democratic processes. We also identify with disadvantaged persons of all races, colors and creeds. We believe in the benefits of a pluralistic society. For these reasons, we believe that immigration is now and has been good for America and that immigration should continue.

The legislation approved by the Senate in the 97th Congress contained some provisions we supported and others that we vehemently opposed. Specifically, we support employer sanctions and amnesty and oppose the creation of the U.S. Immigration Board and Immigration Judge system, expansion of the temporary worker program and have grave reservations concerning the asylum provisions and the impact on Haitian refugees. It is our concern that national immigration reform policy be consistent, fair and not jeopardize basic civil rights. Regrettably, S. 2222 did not meet that test.

Employer Sanctions

We are concerned about the impact of undocumented workers on other disadvantaged U.S. workers. It is the NAACP's position that it should be against the law for employers to hire undocumented workers.

The NAACP at its 68th Annual Convention in St. Louis adopted the following policy statements:

"WHEREAS, the NAACP is concerned about the effect of employment of illegal aliens on employment opportunities of black citizens in these United States; and

WHEREAS, legislation has been introduced in the Congress to curb the employment of such aliens; and

WHEREAS, the proposed legislation raised serious problems of civil rights as well as civil liberties, including the use of identity cards for all citizens; and

WHEREAS, the proposed use of such identity cards if fraught with dangers of abuse of official powers,

THEREFORE BE IT RESOLVED, that the NAACP in Convention assembled, direct the chairperson, Executive Director, and its National Board of Directors to advise the President of the United States, the Congress, and through them all appropriate departments, agencies, corporations, businesses and individuals, of its grave concerns relating to illegal aliens, their unlawful employment and the need for assurance of full observation of the civil rights of all U.S. citizens when legislation is drafted to deal with this problem.

BE IT FURTHER RESOLVED, that the President and the Congress, through the passage and enactment of proper legislation call for the immediate cessation of the employment and use of all illegal aliens.

AND BE IT FINALLY RESOLVED, that the President and the Congress approve of the levying of stiff monetary and/or imprisonment penalties to be imposed on all persons, businesses and/or groups and organizations found to be guilty of violations of the employment and use of illegal aliens."

Presently there are about 12 million American workers who are officially unemployed. Black unemployment exceeds 20% and black youth unemployment has hovered near 50% for more than a year. Employers who hire one of these 12 million citizens must comply with the minimum wage requirement, fair labor and other federal laws. The employee would have rights regarding hours, working conditions and salary. If, on the other hand, an employer hiresan alien who is not entitled to lawful residence in the U.S., the employer can violate these laws -- exploit the employees -- and never be in fear of prosecution because the employee too is in fear of prosecution and deportation. Because illegal alien employees can be exploited without fear of sanctions, they are preferred employees for many jobs traditionally held by blacks, while black residents remain unemployed in alarmingly high percentages.

Moreover, since employers of undocumented workers do not pay Social Security and other state and federal taxes, the employment of undocumented workers is a drain on the national economy.

We believe that employer sanctions, properly enforced, could have a far-reaching positive effect on the U.S. labor market and particularly the black labor force. It is estimated that there are millions of undocumented workers in the U.S., most of them in unskilled labor positions.

However, the NAACP opposes the use of a "green card" or any other identity card which carries with it a potential negative stigma.

Amnesty

With regard to amnesty, we oppose the Grassley amendment adopted during Senate consideration of S. 2222, which moved from January 1, 1978 to January 1, 1977 the date by which illegal aliens must have entered the U.S. to become eligible for permanent resident status under the amnesty provisions. It is our view that the January 1, 1978 date in the bill before amended should be updated to the date of enactment so as to cover the Haitian refugees who entered the U.S. after that date and avoid creating a large subclass of people who entered after the cut-off date who would still be subject to employer exploitation. The NAACP opposes the establishment of further classes of citizens and therefore believe that illegal aliens should be granted blanket amnesty and thereafter fully integrated into the mainstream, with all the rights, responsibilities burdens and benefits of residents.

Independence of the Adjudication Process

The NAACP was particularly troubled by S. 2222 provisions on the creation of the proposed U.S. Immigration Board and the establishment of the Immigration Judge system. We believe that the independence inherent in S. 2222's original provisions for administrative law judges and a presidentially-appointed-Senate-confirmed board to hear appeals should be restored. This reinstatement of the original appointment responsibility structure is critical to the independence and to the perception of integrity for the proposed system. Under S. 2222 as passed by the Senate, the Board and its judges would be no more than an arm of the Justice Department, rather than a judicial body subject to senatorial confirmation.

The need for a fully independent arbiter is particularly acute in asylum decisions where there are substantial foreign policy considerations involved and where the State Department's role is often dispositive of the outcome.

Court Stripping

Perhaps most troubling of the asylum provisions is the court-stripping provision which eliminates all appeals as a matter of right to the circuit courts for review of denials of asylum requests and would limit the writ of habeas corpus in that regard to matters "under the Constitution."

By limiting the writ to constitutional matters, S. 2222 would preclude its use to address statutory and treaty violations. It would also preclude class action challenges to exclusion and asylum proceedings.

Temporary Worker Program

We also have strong objections to expansion of the "H-2" temporary worker program, just as years ago we opposed the notorious bracero program. It is our view that there is an ample supply of workers in our country right now -- with 12 million unemployed American workers idle. We believe that too many workers create unemployment for the workers and unemployment costs for the government.

We also believe that the addition of temporary alien workers generally means the addition of workers with limited rights, as was the case in the bracero program.

Until our unemployed are gainfully employed, the NAACP opposes importing any new workers.

Haitian Refugees

Refugees have generally been welcome to enter our shores, but there has been discrimination in the way we let people come into our country.

The NAACP is concerned that a distinction is made regarding one group of political refugees, those from Haiti, who are fleeing from conditions as harsh as those in Vietnam and yet they have not been defined as political refugees by the Immigration and Naturalization Service (INS). We regard refugees from other countries -- Indochina, Cuba and Afghanistan, for example -- as political refugees, yet, Haitian refugees are subjected to a double standard and are not accorded refugee status because they have been termed economic refugees. For example, last year the INS proposed regulations intended specifically to single out Haitian refugees for disparate treatment.

In 1980 the NAACP went on record with a resolution calling on Congress to enact permanent legislation to designate Haitians as political refugees.

"WHEREAS, the United States has been a haven for the tired, the poor and the homeless, giving blanket refugee status to hundreds of thousands of Cubans, Cambodians, Vietnamese, Eastern Europeans and others; and,

WHEREAS, as a result of recent intolerable economic, social and political conditions, thousands of Haitians have fled their homeland and sought refuge in America; and,

WHEREAS, the Haitian boat people are continuing to arrive in Florida necessitating an increase in existing social programs and services and they are greatly in need of an orderly system of delivery for processing and seeking governmental services; and,

WHEREAS, the Federal Government has failed to classify Haitians as political refugees, thereby leaving them in an illegal aliens status; and,

WHEREAS, Amnesty International has described the reality of political repression in Haiti and the arrest and executions of Haitians deported by our Immigration and Naturalization Services; and,

WHEREAS, discrimination against Haitians turns on whether Haitians are fleeing political persecution or economic conditions; and,

WHEREAS, because of Immigration and Naturalization Services practices, thousands of Haitian boat people have been denied refugee status and are forced to exist without legal authority to work or gain access to Federal benefits; and,

WHEREAS, the granting of refugee status to the Haitian "boat people" is moral, humane and refutation of the perception that our refugee policy is tainted by racial, ideological or class discrimination.

THEREFORE, BE IT RESOLVED, that the NAACP call upon the President to issue an appropriate executive order to declare them political refugees.

BE IT FURTHER RESOLVED, that the NAACP call upon the Congress to enact permanent legislation to designate Haitians as political refugees.

BE IT FURTHER RESOLVED, that the President demonstrate his commitment to human rights for all by granting political aslyum to these Haitian boat people already in this country under his parole authority.

BE IT FINALLY RESOLVED, that the NAACP, through its Washington Bureau work for the passage of H.R. 2816, the Refugee Act of 1979 or successor legislation."

These are some of our concerns, concerns based on deep feelings of identification with disadvantaged workers and in line with the objectives for which my organization was founded. We do not believe that black political refugees should be accorded unequal status. We worry about the large numbers and adverse impacts of undocumented workers on our society. We fear that the judicial review provisions of S. 2222 as approved last year violate due process rights.

The NAACP urges you to reconsider these provisions of S. 2222 as new legislation is drafted this year.

Thank you.

Senator **Simpson**. Thank you very much for your testimony and your understanding.

Dr. Rosenzweig, please.

Nice to see you.

Dr. **Rosenzweig**. Nice to see you, Mr. Chairman.

Senator **Simpson**. You might take that microphone from Mr. Kee.

Thank you.

STATEMENT OF MARK R. ROSENZWEIG

Dr. **Rosenzweig**. Mr. Chairman, as I came in, just earlier, I was impressed by your eloquent and succinct statement about the purpose of the immigration bill, which is to achieve control of the border. This means the United States must choose who it will allow to cross those borders and become U.S. citizens. I want to address my statement to the question of the criteria for admitting immigrants.

Under the current law, reunification of spouses, and the reunification of parents with children, as well as freedom of U.S. citizens to marry foreign born persons without restriction, appear to be overriding objectives of immigration policy, and are retained in the proposed bill.

Less clear in the current law is the rationale for the priority accorded the fifth preference category, in which brothers and sisters of adult U.S. citizens become qualified for immigrant visas, subject to only country of origin and exclusion restrictions. Whatever the rationale for it, the sibling preference differs from those family preference categories involving parents, spouses, and children, in one important respect.

Unlike the other categories, the allotment of visas based on sibship potentially leads to an unlimited demand for visas by new qualified applicants. For example, the admission of one immigrant who has foreign born siblings, or marries an individual with foreign born siblings, may automatically create additional potentially qualified visa applicants who, when admitted, can petition for the siblings of their spouses.

Indeed, if the immigrant's parents are admitted, they can in turn petition for their brothers and sisters, resulting potentially in the addition of the brother and sister-in-laws, uncles, cousins, et cetera, of the original immigrant.

The fifth preference visa multiplier is mainly responsible for the current large backlog of immigrant visas. Thus, even if the reunification of brothers and sisters were thought to be an overriding criterion for admission of immigrants, it is not clear that it is sufficiently restrictive so as to balance the demand for visas by qualified applicants, those who are legally entitled to receiving a visa, with the current or proposed supply of available visas.

Now, admitting immigrants solely on the basis of having a brother or sister residing in the United States may be desirable if such a criterion is compatible with or promotes other goals of U.S. immigration policy. It may be, for example, that such immigrants have as little adverse effects on the labor market as those who are screened through labor certification, or that fifth preference immigrants, brothers and sisters, integrate economically as successfully as other immigrants presumably chosen according to more economic criteria.

What I want to report briefly now is some findings from a probability sample of legal immigrants who became permanent resident aliens in 1971. This was work that was performed by myself and Guillermina Jasso, who is a sociologist at the University of Minnesota, and was a research director, along with myself, at the Select Commission.

We compared the emigration—leaving the country—and naturalization rates and occupational mobility of fifth preference and labor certified immigrants, approximately 8 years after entry. Such rates are indicators of successful integration. We wanted to see how these groups differed in these indicators of success.

The preliminary results suggest that: first, immigrants who must undergo labor certification, independent of their country of origin, appeared to me to be more highly motivated to naturalize, and hence more successful immigrants compared to all other immigrants.

Moreover, fifth preference immigrants, not only were less likely to naturalize than all other immigrants, but also were 35 percent more likely to have left the United States after 8 years than were non-fifth preference immigrants.

Indeed, of those immigrants still in the United States in 1979, fifth preference immigrants were 24 percent less likely to have naturalized, compared to any other group.

With respect to occupational mobility, we found that labor certified immigrants were more likely than any other immigrants to remain in the same major occupation with which they were screened.

Now, what policy inferences might be drawn from these results? If naturalization and emigration, leaving the country, are taken as indicators of immigrants' success, of putting down roots in the United States, then independent immigrants, picked according to labor market criteria that is the kind you see in the current law are more likely to be successful than those admitted under the family reunification provisions of U.S. law, and among the family unification groups it is the brothers and sisters who are least likely to naturalize, and most likely to emigrate.

This means that the present U.S. law, which overwhelmingly favors kin, and restricts the immigration of kinless independents, selects on average immigrants who are less willing to make commitments to the United States, than would be the case under less nepotistic policies.

Finally, labor certification provisions appear to reduce the likelihood of job change, thus, the recurring criticism, or one recurring criticism, that this requirement is ineffectual, since immigrants are free to change jobs after they immigrate, is shown to be partly unfounded.

Thank you.

[The prepared statement of Mark Rosenzweig follows:]

PREPARED STATEMENT OF MARK R. ROSENZWEIG

a. The Current Law: Family Reunification, the Fifth Preference Category and Labor Certification

In considering changes in U.S. immigration law it is necessary to examine whether the criteria currently used for admitting immigrants best serve the overall interests of the United States. The selection criteria embodied in the current law pertaining to the numerically limited groups principally and explicitly serve the interests of recent U.S. immigrants with respect to their desires to be reunited or to maintain their relationship with relatives. The only additional selection criterion applied to the group of "family" immigrants, who constitute over 95 percent of all immigrants, (in addition to the exclusion provisions) is based on the immigrant's country of origin, operating via the country ceiling provisions. Less than 5 percent of immigrants admitted each year are "screened" with respect to their labor market impact or economic contributions.

Reunification of spouses and reunification of parents with children, as well as the freedom of U.S. citizens to marry foreign-born persons without restriction, appear to be overriding objectives of immigration policy. Less clear is the rationale for the priority accorded the fifth preference category, in which brothers and sisters of adult U.S. citizens become "qualified" for immigrant visas, subject to only country-of-origin and exclusion restrictions. Whatever the rationale for it, the "sibling" preference differs from those family preference categories involving parents, spouses and children in one important respect. Unlike the other categories, the allotment of visas based on "sibship" potentially leads to an unlimited demand for visas by new qualified applicants. For example, the admission of one immigrant who has foreign-born siblings or who marries an individual with foreign-born siblings automatically creates additional potentially qualified visa applicants, who, when admitted, can petition for the siblings of their spouses. Indeed, if the immigrant's parents are admitted, they can in turn petition for their brothers and sisters resulting potentially in the addition of the brother and sister in-laws, uncles, cousins, etc. of the original immigrant.

The fifth preference "visa multiplier" is mainly responsible for the current large backlog of immigrant visas -- one-half of the one-million "qualified" immigrant visa applicants in the backlog, as of January 1979, were fifth preference immigrants, even though in FY 1978 over one-fourth of all immigrants admitted came through the fifth preference. As almost one-half of all fifth preference immigrants are from Asian countries, it would appear that the recent wave of Indochinese refugees may eventually result in a larger future backlog of qualified visa applicants due to the fifth preference multiplier. Thus even if the reunification of brothers and sisters were thought to be an overriding criterion for admission of immigrants, it is clear that it is not sufficiently restrictive so as to balance the demand for visas by *qualified* applicants with the current supply of available visas. Moreover, the backlog of fifth preference applicants means that each year the selection of immigrants *within* this category depends solely on the date of application and country of origin.

Admitting immigrants solely on the basis of having a brother or sister residing in the United States may be desirable if such a criterion is compatible with or promotes other goals of U.S. immigration policy. It may be, for example, that such immigrants have as little adverse effects on the labor market as those who are "screened" through labor certification or that fifth preference immigrants brothers & sisters integrate economically as successfully as other immigrants presumably chosen according to more economic criteria (third and sixth preference). Unfortunately good data do not exist which allow comparisons of immigrants admitted under all of the different preference categories.[1] Based on a probability sample of all immigrants admitted in FY 1971 extracted by the Immigration and Naturalization Service for the Select Commission on Immigration and Refugee Policy, Guillermina Jasso and I have compared the emigration and naturalization rates and occupational mobility of fifth presence and labor-certified immigrants approximately 8 years after entry. Such rates are indicators of successful integration.

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[1] One study of immigrants a number of years after entry, by David North, suggests that fifth preference immigrants do marginally less well in terms of earnings than do other immigrants. However, because the sample is non-representative, conclusions drawn from it have little scientific validity.

These preliminary results suggest that the provisions and selection criteria embodied in U.S. immigration law are importantly associated with immigrant behavior in the United States. Immigrants without kin who must undergo labor certification and immigrants with prior residence in the United States, independent of country-of-origin, appear to be more highly motivated to naturalize, and hence more successful immigrants. However, fifth preference immigrants (of the Eastern Hemisphere) were 35 percent more likely to have left the United States after 8 years than were non-fifth preference immigrants (of the Eastern Hemisphere) and of those immigrants still in the United States in 1979, fifth preference immigrants were 24 percent less likely to have naturalized (see Table 1).

Table 1

Naturalization and Emigration of the FY 1971 Immigrant Cohort, Eight Years After Entry[a]

	Percent Naturalized	Upper-Bound Emigration Estimate[b]	Percent Naturalized of Those Known to be Here
All Immigrants	22.1	52.5	46.5
Eastern Hemisphere[c]	34.3	42.6	59.8
5th Preference	21.9	53.6	47.2
Non 5th Preference	37.6	39.6	62.3
Western Hemisphere	7.98	63.9	22.1

[a] 'Entry' refers to admission to permanent residence status.

[b] For a detailed discussion of the data and methods used in obtaining these figures, see Guillermina Jasso and Mark R. Rosenzweig, "Estimating the Emigration Rates of Legal Immigrants Using Administrative and Survey Data: the 1971 Cohort of Immigrants to the United States," Demography 19, August 1982.

[c] In 1971 the preference category system only applied to Eastern Hemisphere immigrants.

With respect to occupational mobility, 46 percent of the naturalized adult immigrants reported no change in major occupation group, while 19 percent experienced upward mobility. Labor-certified immigrants were more likely than any other immigrants to remain in the same major occupation group.

What policy inferences might be drawn from these results? If naturalization and emigration are taken as indicators of immigrant success, of "putting down roots" in the United States, then independent immigrants are more likely to be successful than those admitted under the family reunification provisions of U.S. law, and immigrants who have had prior residence in the United States are similarly more likely to be successful. This means that the present U.S. law, which overwhelmingly favors kin and restricts the immigration of kin-less independents, selects on average immigrants who are less willing to make commitments to the United States than would be the case under less nepotistic policies.

The labor certification provisions appear to reduce the likelihood of job change; thus, the recurring criticism -- that this requirement is ineffectual since immigrants are free to change jobs after they immigrate -- is shown to be unfounded. On the other hand, the labor certification provsions appear to operate also as a deterrent to upward mobility, which may or may not be in the spirit or intent of U.S. immigration policy.

b. Selecting Immigrants Using a "Point System"

A "point system", whereby applicants are given point scores or are ranked according to a variety of pre-specified criteria, is a means of selecting immigrants which explicitly recognizes that there are trade-offs or conflicts between the priorities and goals of the United States and that individuals have many attributes, some or all of which contribute to or detract from those goals. Immigrant characteristics or attributes which may contribute to the achievement of U.S. interests could include those which reflect the demand for certain workers, for cultural diversity and for national unity as well as criteria which accelerate integration or provide recognition of family ties.

Prior to a discussion of the desirability of specific criteria, it is important to note that the point system can either be the sole means of selecting immigrants within a category, such as in the "independents" category recommended by the Select Commission, or it may be an adjunct to categories which qualify applicants according to one criterion to further screen those applicants. The point system could be added to the existing preference system, say, as a means of choosing among all the fifth preference visa applications (which will in the foreseeable future be greater than the total number of available visas) or among persons admitted in the current third or sixth preference categories to insure that such immigrants were in part serving, or were not in overwhelming conflict with, other priorities. Thus a point system, while not necessarily a substitute for any particular preference category or method of "screening" workers, can improve a system of separate categories which admit all immigrants satisfying any one criteria by striking a balance between criteria which are not compatible. For example, the overall goal of "protecting" U.S. workers, when only 22,000 immigrants out of 450,000 admitted are screened, as in 1978, is clearly not effectively met by current law, whatever the desirability of the goal, because of the admissability of any U.S. citizen immediate relative. Obviously all immigrants have some impact on the economy; moreover, immigrants screened only by economic criteria also affect the cultural fabric of U.S. society.

The direct conflict between economic and family unification goals is particularly evident under current law in the third and sixth preference categories. In those categories, only one immigrant applicant from a family - "the principal" - is screened, with immediate family members of principals admitted subject only to the exclusion criteria. Yet, for example, the female spouses of the principals are likely to have developed fewer market skills and to work, therefore, in just those "less skilled" occupations, at least initially, which are being "protected". A point system could be used to assess the qualifications and multifaceted impact of the entire immigrant family.

c. Characteristics of Immigrants, U.S. Interests and the Canadian Point System

In Canadian immigration law, the point system is used to evaluate certain categories of immigrants. Foreign-born close family relatives of Canadian citizens are exempt from the test, but the system is applied to a number of immigrant categories, with minimum point scores differing by category. There are ten selection criteria used, which reflect concern about the economic success; the local labor market, cultural and demographic impacts, and family ties of immigrants. I will discuss briefly some of the objective criteria used in the Canadian system with respect to 1) the evidence on their associations with the behaviors and impacts of immigrants in the U.S. and 2) their applicability to the United States. It should be noted that the most reliable information on the behavior of the foreign-born comes chiefly from two data sources - the 1970 Census of Population and 1976 Survey of Income and Education (SIE). The evidence on immigrants thus reflects the differing selection mechanisms embodied in immigration law over the past 30 years or so, up to 1975. Associations between immigrant characteristics and behaviors may be quite different in the future, given the additional changes in the methods of and criteria used in allocating visas occurring since 1975 or given a new immigration law.

Schooling. In Canadian law, educational level (schooling) contributes to the total point score of a prospective immigrant. The U.S. data indicate that more educated immigrants, from any country of origin, have significantly higher earnings, lower unemployment rates, use less welfare services, are more likely to own their home, and are more able to speak and understand English and tend to speak English in everyday life more readily compared to less educated immigrants. The Canadian system by no means bars the entry of the less educated, since schooling is only one of 10 criteria; vocational preparation and occupation also contribute to the total score.

Age at entry. The available evidence suggests that immigrants who come to the United States at *younger* ages, all other characteristics the same, are significantly less likely to have difficulties in speaking or understanding English, use less social welfare services and are significantly more likely to naturalize. The effects of age at entry on earnings, however, cannot be separated from effects due to current age or length of residence in the U.S., however, because these effects are confounded with each other in the available cross-sectional data (information taken on individuals at one point in time). A rationale in the U.S. for favoring younger immigrants is that the average age of the native-born labor force will be increasing in the foreseeable future, given native fertility trends; selecting younger immigrants will tend to reduce any adjustment costs associated with changes in the demographic composition of workers. In recent years, the mean age of newly-admitted immigrants has been about 5 years younger than that of the native population (25 compared to 30); those admitted in the occupational preferences, however, have been less than 2 years younger, on average, than the native population. Of course, favoring younger immigrants tends to depress the wage rate of the young relative to the old, but the wage rates of the young will likely be increasing relative to that of older workers in the future, given the demographic trends. Little evidence exists on the consequences of the "aging" of the U.S. population (with the exception of the funding for the Social Security System).

Knowledge of English (and French). The Canadian point system creates incentives for visa applicants to learn the official languages of their new residence. Evidence obtained from a Select Commission study of the 1976 SIE suggests that in 1975-76 more than one-fourth of all the foreign-born in the U.S. aged 25 to 64 had difficulty in speaking English, despite the fact that the average immigrant at that time had been in the U.S. 15 years. Surprisingly, however, the data suggested that among the male foreign-born, there was little (no statistically significant) association between economic success (earnings, unemployment) and English language ability; for foreign-born women, earnings were about 10 percent less for women reporting English language difficulties. Since the most significant group among the foreign-born with English language difficulties was from Spanish-speaking countries, these results, while they cannot be interpreted as the "causal" effects of language skills, suggest that the U.S. economy accomodates a language other than English. Put another way, the U.S. private sector appears on average not to provide incentives for a large number of immigrants to learn English. If the social, political, and cultural consequences for the United States of language barriers between resident groups are seen as problematical, then the addition of an English language skill incentive (the lack of any one attribute does not necessarily bar entry under a point system) in immigration law would be useful.

Relative. Being a relative of a Canadian citizen, among prospective immigrants who are not immediate relatives, is seen as a desirable immigrant trait in the Canadian point system. It is likely that family members facilitate economic integration, although there is little evidence on the role of non-immediate relatives in the process of immigrant assimilation. This criterion in any case serves the goal of reuniting broadly-defined families, as in the U.S. preference system.

Arranged Employment or Designated Occupation, Occupational Demand. These two criteria used in the Canadian point system are similar to those used in the U.S. labor certification process - certain occupations are favored over others and a job offer is deemed desirable. The Canadian law thus illustrates the integration of labor market impact criterion into a multicriteria point system, where it is not the sole criterion.

Location. The location in Canada of the prospective immigrant's intended residence is used as criterion in the Canadian point system. It should be noted that the distribution of the immigrant population is significantly more concentrated in Canada than in the United States and that the ratio of the annual flow of immigrants to the overall Canadian population is about twice that of the United States. As a consequence, concern about local impacts of immigration are much more significant in Canada. Given the high geographical mobility of the U.S. population, and the foreign-born in particular, the use of intended, initial residence as an important criterion for selecting immigrants would appear less desireable in the U.S. Indeed, over 30 percent of those naturalized citizens from the 1971 cohort of immigrants had changed their state of residence in less than 8 years.

Personal Suitability. The most significant difference between the Canadian and U.S. Immigration laws is in the discretion accorded immigration officials in determining immigrant qualification. This criterion clearly reduces one advantage of a point system - its objectivity; it is a criterion in which neither the weights given immigrant characteristics nor the characteristics themselves are explicitly specified. On the other hand, the personal interview is a means by which those important and desirable personal characteristics of immigrants which cannot be readily quantified such as drive, ability, "get up and go" can be detected; "statistical" discrimination is thus somewhat reduced.

In sum, the Canadian point system attempts to deal with many of the goals embodied in current U.S. immigration law, as well as others, some of which are pertinent to U.S. interests. The system also illustrates the difficulty of choosing among potential immigrants who are not immediate relatives of citizens to meet national goals, while at the same time maintaining fairness and "openness". As long as the number of persons in the world who would like to emigrate to the United States exceeds the number of immigrants whom the U.S. would like to admit, however, it is necessary to establish criteria by which immigrants are selected, to choose. Whatever the criteria chosen, because of the not insignificant private costs and risks entailed in cross-national migration, immigrants are likely to be positively self-selected and thus are likely to be serving the overall U.S. interests under most any selection system.

Senator SIMPSON. Well, that light really did tear by you, did it not? Thank you. That is very interesting testimony as all of it has been.

And now Mr. George Zachariah, please.

STATEMENT OF GEORGE K. ZACHARIAH

Mr. ZACHARIAH. Thank you, Mr. Chairman.

I am George K. Zachariah and I represent Indian-American Forum for Political Education. I am accompanied by two of my colleagues, Dr. Natwar M. Gandhi and Dr. T. V. George. We are pleased to be here to discuss our views on the Immigration Reform and Control Act of 1983.

The primary purpose of our forum is to function as a catalyst to create political awareness and to provide opportunities for learning through discussion sessions on contemporary economic and social issues affecting lives of individuals of Asian-Indian origin residing in the United States. The forum organizes lectures, meetings, seminars, symposia, and workshops on issues pertaining to current political, economic, legislative, and regulatory developments.

As an immigrant community, we are indeed small, some 400,000 in all, and new to this great land of opportunities. Most of us came only after the liberalization of immigration quota rules in 1965. British policies prior to Indian independence and the U.S. law before recent liberalization largely account for the earlier dearth of sizable immigration from that region. Even though there are significantly larger groups of residents from less populated Asian countries, there is only a relatively small group of people in this country from the Indian subcontinent. Though late in coming here, we have not come emptyhanded. We have come endowed with a dazzling array of professional and trade skills and an amazing degree of higher education. We are among the most professional and highly educated citizens of the United States.

We are a small community when measured by our numbers, but when one looks at the contribution that we have been making to our adopted country, we are indeed a major professional force. Most illustrious members of our community are persons like Zubin Mehta, the famed conductor of New York Philharmonic, Ravi Shanker, the great sitarist, and Dr. Hargobind Khoranna, the Nobel Laureate scientist. But there are hundreds of thousands of us making significant contribution to fields as diverse as accounting, zoology, and anything in between. There could hardly be a hospital in this country without an Indian doctor, a university without an Indian professor. a major engineering firm without an Indian engineer, or a highway without a resting place, generally a small motel, run by an enterprising Indian. One can hardly open a professional journal without a major article authored by an Indian in it.

I catalog all this not as an exercise in self-praise, but to emphasize the fact that we have contributed far out of proportion to our small numbers, and to acknowledge the fact that this great country has provided us with opportunities to do so. Indeed, whatever others may say, we could say unequivocally, that America has been good to us. The distinguished American psychoanalyst Erik Erikson, himself an immigrant and biographer of the great Indian leader Mahatma Gandhi, once remarked that to an immigrant with skill this country is a heaven. We have proved that once again. The American dream is a reality to us.

Along with our professional skills and entrepreneurial zeal we have also brought with us the great cultural and spiritual heritage of India which, I believe, adds substantially to the rich milieu of ethnic America. Economically, socially and spiritually, we are one immigrant community which has found its niche in this land of immigrants.

However, we have come from a society and culture where concepts of family and family relationships are broad. To us a brother and a sister are as close as a son and a daughter. Father and mother matter as much as husband and wife. These are also very strong relationships which have been nurtured through an ancient culture and instilled into us from childhood. The great Indian epics from which our values are distilled, speak glowingly of sacrifices one should make for brother and sister, father and mother. It is this bond of love and obligation that binds us to those dear ones we have left behind in India. It is that bond again which brings us here today before you to object to one particular provision of the immigration reform bill whose overall goals and objectives, however, we endorse and support.

The proposed Immigration Reform and Control Act of 1983, if adopted, would eliminate the special consideration given to the immigration of brothers and sisters and adult sons and daughters of the American citizens. Under this provision, many of us may never again be united with our family members whom we have left behind and whose love and warmth we miss daily and whose welfare is at our heart during every waking moment.

It should be noted that whether in the earlier days or the later, the immigrant brought with him no institutions except perhaps the family. It is not therefore without reason that in the long evolution of American immigration policy the basic principle of family unity became one of its cornerstones. Since the first quota restrictions became public law in 1921, the Congress has recognized the principle of family unity as a basis for restriction exceptions. Progressively all the members of the family were included in the system. The restriction in the new bill will indeed be a step backward.

We strongly urge that the current preference system be retained and be made a permanent part of the immigration reform. The current preference system also assures us that we, the new citizens, too, will have the same right to family reunification that has been given to those who were lucky enough to land here before we did.

We are also concerned about an arbitrary cutoff date of May 27, 1982, suggested in the proposed bill, as the last date by which an application for fifth preference migration should have been approved for a family member to come to the United States. This cutoff date will leave American citizens as well as their family members abroad at the mercy of the Immigration and Naturalization Service [INS], which generally takes months to process and approve immigration applications. We are also concerned about the current backlog for the family reunification category. An American citizen may have applied many months before the cutoff date, and yet could be denied his/her family reunification right just because the INS, overburdened as it is, did not process the application before the cutoff date. We believe that such a cutoff date is arbitrary and capricious, and thus should be rejected altogether. A one-time waiver of numerical limitations would alleviate the 2- to 4-year delay for those family members who have otherwise complied with all immigration requirements.

We applaud and appreciate the great efforts that you, Mr. Chairman and members of the committee have made to reform the immgration process. We also wish to commend the great preparatory work of the Select Commission on Immigration and Refugee Policy. We endorse and support the overall objectives of the bill. However, we also believe that family reunification provisions of the current law should be maintained because it strengthens family traditions cherished here. We also believe that selective immigration like ours enhances the professional strength and economic health of America. Indeed, it is a great bargain for America.

We thank you for giving us this opportunity to present our views.

I will be pleased to answer any questions you may have.

Senator SIMPSON. Thank you for a very powerful statement. Some questions now, starting with Mr. Kee.

I note your concern about the bar against student adjustment. What suggestions might you share with us to control students who come here with the intent of staying indefinitely, as many do, and colleges which recruit knowing full well that the student is enrolling only as a means to immigrate really through the back door? How do you suggest we deal with that issue?

Mr. KEE. Well, as I said, allowing them to adjust should be in our national interest. Because we should be selective as to those professions and categories in which we find that the U.S. national interest would be served. I think you will find that foreign students in general are heavily in the science and engineering curriculum and traditionally we have drawn a large number of our technicians, scientists, and engineers from students, and I think if we want to maintain our leadership in technology, we ought to have that factor in mind.

Senator SIMPSON. I am aware of that, but we do have this situation arise, we have the intent of the student to stay indefinitely. We also know that they in many cases will enter into marriage, sometimes even sham marriages, and the colleges and universities will recruit knowing that that is going to eventually be a back door method of immigration. That is the tough one. How do we deal with it? That is our problem. I appreciate your views.

I certainly hear clearly what you are saying with regard to the elimination of the fifth preference and how we got into that box. Let us review the bidding one time. If we come up with a cap, and I think that the Senate at least felt that there would be a cap, an overall cap, then under those circumstances would not you favor giving those to the closest family members because if we have a limited number of visas, then it is obvious to all that each visa given to a brother or sister means one less visa for a husband, or a wife, or a child. Where are we on that?

Mr. KEE. I do not necessarily agree with that. Because I would cut down on the independent category in favor of family members. I feel that in your bill, the large numbers given to independents, investors, and seed stock is really very large, and I feel that the fifth preference could be retained by cutting back on those numbers.

I think that we have to leave the eligibility factor in there. If brothers and sisters want to apply in that and wait a long time, then so be it, but I think we ought to leave the door open for brothers and sisters to apply.

Now, if I may, I was very astounded by Mr. Rosenzweig's remark about the visa multiplier effect of the fifth preference. I think on page 2 he makes one basic error in which he says that as soon as an immigrant comes in when admitted, he could start petitioning for sibling. And that is absolutely untrue. And therefore I think his whole thesis about the multiplier effect is incorrect. I think that is panic—that he is creating panic here because brothers and sisters cannot be applied for except by naturalized citizens or U.S. citizens.

Senator SIMPSON. I am going to suggest that since Mr. Rosenzweig is sitting right there next to you that the two of you visit about that immediately upon the conclusion of the proceedings.

Mr. KEE. I will be very happy to consult with him.

Senator SIMPSON. I think that would be interesting and then let me know what comes about.

Mr. ZACHARIAH. Mr. Chairman, can I comment on something?

Senator SIMPSON. Yes; I would rather if you want to have a discussion among yourselves, that perhaps you could limit that or do that afterward.

Mr. ZACHARIAH. That is for your information, the study that he was referring to, the one that he conducted and reported here was referring to people going back just after 8 years, maybe the reason why many of these people are going back is because, most of all, immediate family members are back there and they are really feeling desolate being alone here. I do not know whether he has given some attention to that particular aspect in his study.

Senator SIMPSON. Well, as on all of these issues that I have found, and you all know too, there is another side, we do not talk just about actual brothers and sisters but about their derivative as well and the spouses and children of the brothers and sisters who are not direct family members of U. S. citizens. The majority of the fifth preferences, visas go to derivatives. So it is an interesting business.

I will come to all the questions eventually. I think we have or will.

But did you have anything more to add, Mr. Kee, to that response?

Mr. KEE. After submitting our testimony at last year's hearing, your chief counsel asked me for some clarification of my definition of nuclear family, and yet when I recently read through the 50th anniversary issue of Newsweek, entitled The American Dream, the idea of family permeates the whole issue. The greatest progress of American families, whether they be immigrants like the Capelli family or the Bayley family, the greatest economic progress was when they had a very closeknit family organization with brothers and sisters helping one another. And in one paragraph, one of the Capelli brothers mentions to his sister, just remember, a brother will always be a brother, your husband will be a friend—sometimes.

Senator SIMPSON. I think that is an interesting quote.

Well, even under this legislation proposed, you are aware that there is no limit on the immediate family even under the—even if it came to caps and everything else. There is still a historical perspective.

Althea Simmons, if I might, please. I note your support of employer sanctions because of the impact on, I believe you phrased it, ghetto youth.

Do you feel that there is clear evidence of a relationship between the impact of illegal aliens and ghetto unemployment as you phrase it?

Ms. SIMMONS. Yes, Mr. Chairman, I do. As a matter of fact, before the NAACP took its position in 1977, our branches across this country, in big cities, had compiled information for us with reference to the impact that undocumented workers were having on employment in central cities. It first came to our attention in Chicago and then Los Angeles and other places, and based on that, when it came before the convention, our convention felt compelled to take the position it took on employer sanctions.

Senator SIMPSON. You have been very consistent and very thoughtful in the materials you have furnished to the subcommittee and to the Select Commission. Of all groups, yours is a consistency that is admired.

Do you feel that you really have grappled with it and have the facts to continue to stick with your position?

Ms. SIMMONS. Yes, sir.

Senator SIMPSON. With a lot of around the country participation?

Ms. SIMMONS. Yes, sir; we have 800 branches in all different places of the country, and a large number of black Americans, as you well know, live in central cities.

Senator SIMPSON. You also urge a blanket amnesty up to the date of enactment, which is a rather sweeping one.

I will ask you this, will that not impact as well on the ghetto youth you describe since a late date is going to, I think, encourage additional illegal entrants to enter during this year and possibly the next?

What are your thoughts on that?

Ms. SIMMONS. I think you are absolutely right. One of the things the NAACP in its statement of mission, our purpose is to bring about equality of minority group members. And although we realize there would be a little undue leverage, we feel we almost have to keep a vote in those camps because we think that would be equitable. And I thought very seriously about that. But we believe it is in the public interest.

Senator SIMPSON. That is an authentic sounding response and it is a tough one. That date you may be assured will be a very important discussion in the subcommittee before we report out for markup on that issue. Thank you.

Dr. Rosenzweig, the multiplier effect, back to that. You have noted this multiplier effect on the fifth preference, and already you have had an opportunity to defend that. Have you done any studies on the actual effect, in practice of the fifth preference?

Dr. ROSENZWEIG. Well, one of the things I say in the written testimony is it is very difficult, given the available statistics, to answer many of the important policy questions of which that is very important. One would need information on the brothers and sisters and other relatives of immigrants as they come in to have some idea of the interconnections between them and there are, as far as I know, no available statistics which allow you to trace out an actual multiplier.

Senator SIMPSON. There is some considerable belief that the very significant backlogs in the fifth preference in themselves lead to illegal immigration.

Would you comment on that, please?

Dr. ROSENZWEIG. Well, I think that there is some validity to that and I should mention that in January 1979, one-half of the 1 million visa applicants who were waiting in line were fifth preference immigrants and that had risen from the previous year, from one-fourth of all immigrants being fifth preference immigrants. So fifth preference plays a large role in that backlog and, as you say, could be in part responsible for some of the illegal immigration.

Senator SIMPSON. It is a huge backlog. We want to clear it, know that it will increase tremendously. I know that. I do not know under quite what theory of mathematics it would do so but it will certainly do so.

I think an interesting thing I might share with you is that the Select Commission, and I could not remember these figures and asked the staff to get them, that the Select Commission found, and this is an interesting thing, that each fifth preference visa generated 64 derivatives, and that is the issue we grappled with in this arena.

Mr. Zachariah, you have mentioned some extraordinary contributions in a very short period of time of the Indian community to American life.

Are you aware of the employment competition between new Indian immigrants and illegal aliens?

Mr. ZACHARIAH. I am not aware of a substantial competition, no.

Senator SIMPSON. You could believe that there might be, could you not?

Mr. ZACHARIAH. It is possible.

Senator SIMPSON. We seem to perceive that that is possible too, that indeed there is employment competition between new Indian immigrants and illegal undocumented workers. To what degree I do not know. I just ask you if you are aware or if you do know?

Mr. ZACHARIAH. I do not have any statistics.

Senator SIMPSON. The fifth preference category for Indian is now backlogged to 3 years, and given that fact, would it not just, perhaps, be a cruel hoax on the people of India to continue that preference and have them refer to us as a country perceived as being rather democratically slothful in that and unfair?

Mr. ZACHARIAH. See, that is why I proposed that we have a one-time waiver of numerical limitations. The backlog can be cleared by a one-time waiver. Another thing that the committee must be aware of is that the principle is what is at stake. I think when the legislation is being proposed, there are certain principles, very basic principles behind them, and the main thrust of my presentation here was that the family unity is a fundamental principle and which the Congress has, through its historical wisdom, has supported and tried to preserve. And what we are suggesting is that it be continued.

Senator SIMPSON. A waiver, a one-time waiver, I think, even if that were to come to pass, there would still always be a backlog in that preference.

Mr. ZACHARIAH. Yes; the reason why we are suggesting is that this arbitrary cutoff date will really be unfair to some people, quite a number of people. That is the reason why we made that proposal, and this is not going to be repeated again, you know.

Senator SIMPSON. That is the wish, or that is the hope, yes, that is true.

But there is a truth here that there will be unfairness by any legislation even though we desperately try to be fair. That is a reality of reform. It is.

Well, I thank you very much for your helpful commentary and we will recess until 1:30 and take up aqain with the next panel of Harvey Ruvin, David Pingree, and James Krauskopf.

I thank you very much for coming. I appreciate your help.

[Whereupon, at 12:41 p.m., the subcommittee recessed, to reconvene at 1:30 p.m., the same day.]

AFTERNOON SESSION

Senator SIMPSON. The hearing will come to order. I apologize for being late. We ran a little late this morning, not too far off, but I know many of you have other things. I am sorry. I apologize.

So, we have the panel now of Harvey Ruvin, commissioner of Dade County, Fla., National Association of Counties; David Pingree, secretary for Human Resources, National Governors Conference, I remember working and listening to his good counsel when he was very heavily involved in Florida; and James Krauskopf, commissioner of Human Resources Administration, city of New York, and for U.S. Conference of Mayors.

Nice to have you here. You, Mr. Krauskopf, I think for the first time.

Mr. KRAUSKOPF. Yes.

Senator SIMPSON. I have seen these other two before in here.

So, we will just proceed in the order on the agenda. Harvey, if you would proceed. And we do have the time constraint. I appreciate your observing that. Thank you.

STATEMENTS OF PANEL CONSISTING OF HARVEY RUVIN, COMMISSIONER OF DADE COUNTY, FLA., NATIONAL ASSOCIATION OF COUNTIES; DAVID PINGREE, SECRETARY FOR HUMAN RESOURCES, NATIONAL GOVERNORS CONFERENCE; AND JAMES KRAUSKOPF, COMMISSIONER, HUMAN RESOURCES ADMINISTRATION, CITY OF NEW YORK, AND FOR U.S. CONFERENCE OF MAYORS

Mr. RUVIN. Thank you, Senator. I do not intend to read my entire statement. We have a prepared statement and that will be submitted for the record. I am going to make some brief comments, if I may.

I really would like to start off by doing more than thanking you for having us here, but thanking you for your heroic efforts on behalf of the legislation that we are here to talk about today and, in fact, you and your staff really pulled off a tremendous success last year, and it is almost like that commercial, what are you going to do to top it?

Senator SIMPSON. We have not done anything yet.

Mr. RUVIN. I admit there is a lot to do. You have reintroduced it and that is why we are here today, to discuss that legislation.

My name is Harvey Ruvin for the record. I am a County Commissioner from Dade County, and I am here on behalf of the National Association of Counties again. We testified——

Senator SIMPSON. Can you pull that mike up a bit, Harvey, please? Just pull it toward you a bit, too. That would be great.

Mr. RUVIN. How is that?

Senator SIMPSON. That is great.

Mr. RUVIN. That is better?

Senator SIMPSON. Yes.

Mr. RUVIN. The National Association of Counties, which is the spokesunit for county government and its 2,100 members across the country, was founded in 1937, and is based here in Washington.

We are here to support the reform of the national immigration—reform of the Nation's immigration policies and we believe that your bill that we are discussing here today, Senate bill 529, will achieve most of the goals of reforms that are needed in a fair and equitable manner.

We are pleased very much to lend our organizational strength to your commendable efforts to pass reform that will be fair and humane to immigrants and enforceable by the Federal Government, as well as equitable to all levels of government.

Mr. Chairman, the prepared statement is essentially a statement of the association's positions. We testified on behalf last time with regard to these and therefore I will simply highlight them in order to focus our presentation today on the still controversial and somewhat unsetttled issue of reimbursement for costs of the legalization program. The statement I have submitted, of course, expands on each of the other provisions, employer sanctions, the creation of a national worker identification—without the identification card, stronger border enforcement which is an essential element of our support—for the legalization program, and improvements to the temporary worker H-2 program.

We believe it is essential that the Federal Government, which has sole authority and responsibility for admission policies and the security of America's borders, be able to control illegal immigration. We recognize the orderly transition of millions of illegal immigrants within our borders to permanent legal resident status as a necessary and positive step toward gaining control.

Although we fully support the purposes and objectives of legalization, NACo's support for legalization is contingent upon adequate reform and Federal reimbursement of any additional costs accruing to county budgets, as well as upon strong enforcement measures.

Our association is concerned about the adequacy of protections your bill contains for local governments against the potential for increased costs of health, welfare, and education for newly legalized aliens. The Senate last year was responsive to these concerns by providing a block grant of unspecified size that would reimburse States for the actual net costs of health and welfare provided to legalized immigrants, but stopped short of assuring counties that the Federal Government will be fully responsible for, or even share equally, in any costs that might arise from the legalization of millions of persons.

Counties often are responsible for providing health, welfare, and social services to persons residing within their boundaries, regardless of legal status. Therefore, Federal immigration policies can have a direct cost impact on counties where concentration of these persons being legalized will occur.

Since both the numbers of legalized persons and the local assistance programs will vary by area, a block grant reimbursement approach would likely prove inadequate for costs in certain heavily impacted areas. Certainly, beyond any estimatable average of mean.

Restrictions in the bill on eligibility for Federal assistance programs will force some counties, especially in California, New York, and my own State of Florida, to bear costs of health care and local assistance for legalized aliens who become needy.

I recognize that most persons becoming legalized will have at least a 3-year period of employment in the United States, and that they will have passed the public charge test. Yet, we must also recognize that many illegal immigrants are employed at minimum wages or other jobs that do not offer adequete health care protection, nor a true hedge against destitution when unemployment strikes.

There is a range of alternatives that we have discussed in the statement that I will submit, and it is an expanded statement of my comments here, to minimize the potential adverse costs on local governments.

For example, if the restriction on eligibility to Federal assistance programs is removed, the Federal Government would then at least share equally in the risk and the costs of medicaid and AFDC. The block grant would then be available to pay for unreimbursed health care and general assistance for indigent legalized immigrants.

Finally, the provision for reimbursement would have to be amended to delete the term "net" expenditures. The concept of determining net costs of assistance is problematic for several reasons.

First, the taxes that the legalized immigrants are presumed to have paid through prior employment are almost exclusively State and Federal taxes. Counties generally do not collect sales or income taxes, and must rely on property taxes to pay assistance and health costs. So, there is no reasonable expectation that needy immigrants will have paid taxes sufficient to offset local costs.

Second and last, the process of determining any net cost would render the system ineffective and meaningless, making it unlikely that even jurisdictions with substantial costs would be able to collect reimbursement from the Federal Government.

I will simply conclude by stating that we again know that we have someone that we can trust, understands, and appreciates the problems that local governments are facing, and we intend to work with you fully in any way that the committee sees that we can be helpful in pursuing this legislation through to its ultimate success. We certainly stand ready.

Senator SIMPSON. I thank you for that overture. That is helpful, very much so.

[The prepared statement of Harvey Ruvin follows:]

PREPARED STATEMENT OF HARVEY RUVIN, ON BEHALF OF THE NATIONAL ASSOCIATION OF COUNTIES*

MR. CHAIRMAN, MEMBERS OF THE SUBCOMMITTEE, I AM HARVEY RUVIN, COMMISSIONER, DADE COUNTY, FLORIDA, AND CHAIRMAN OF THE NACO SUBCOMMITTEE ON REFUGEES, ALIENS AND MIGRANTS. NACo WELCOMES THE OPPORTUNITY TO TESTIFY ON THE "IMMIGRATION REFORM AND CONTROL ACT OF 1983," WHICH HAS BEEN REINTRODUCED EXACTLY AS IT PASSED THE SENATE LAST YEAR.

THE NATIONAL ASSOCIATION OF COUNTIES CONTINUES TO SUPPORT REFORM OF THE NATION'S IMMIGRATION POLICIES, AND WE BELIEVE THAT YOUR BILL S. 529 WOULD ACHIEVE MOST OF THE GOALS OF NEEDED REFORM IN A FAIR AND EQUITABLE MANNER. WE ARE PLEASED TO LEND OUR ORGANIZATIONAL STRENGTH TO YOUR COMMENDABLE EFFORTS TO PASS REFORMS THAT WILL BE FAIR AND HUMANE TO IMMIGRANTS, ENFORCEABLE BY THE FEDERAL GOVERNMENT, AND EQUITABLE FOR ALL LEVELS OF GOVERNMENT.

MR. CHAIRMAN, MY PREPARED STATEMENT TODAY IS ESSENTIALLY A RESTATEMENT OF THE ASSOCIATION'S POSITIONS ON THE KEY ELEMENTS OF THE LEGISLATION, WHICH I WILL HIGHLIGHT BRIEFLY, IN ORDER TO FOCUS IN MY PRESENTATION ON THE STILL CONTROVERSIAL ISSUE OF REIMBURSEMENT FOR COSTS OF THE LEGALIZATION PROPOSAL. THE STATEMENT I AM SUBMITTING EXPANDS ON EACH OF THE OTHER PROVISIONS: EMPLOYER SANCTIONS, WHICH WE SUPPORT WITHOUT THE CREATION OF A NATIONAL WORKER IDENTIFICATION SYSTEM; STRONGER BORDER ENFORCEMENT, WHICH IS AN ESSENTIAL ELEMENT OF OUR SUPPORT FOR LEGALIZATION; AND IMPROVEMENTS IN THE TEMPORARY WORKER H-2 PROGRAM.

WE BELIEVE IT IS ESSENTIAL THAT THE FEDERAL GOVERNMENT, WHICH HAS SOLE AUTHORITY AND RESPONSIBILITY FOR ADMISSION POLICIES AND THE SECURITY OF AMERICA'S BORDERS, BE ABLE TO CONTROL ILLEGAL IMMIGRATION. WE RECOGNIZE THE ORDERLY TRANSITION OF MILLIONS OF ILLEGAL IMMIGRANTS WITHIN OUR BORDERS TO PERMANENT LEGAL RESIDENT STATUS AS A NECESSARY AND POSITIVE STEP TOWARD GAINING CONTROL.

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* THE NATIONAL ASSOCIATION OF COUNTIES IS THE ONLY NATIONAL ORGANIZATION REPRESENTING COUNTY GOVERNMENT IN THE UNITED STATES. THROUGH ITS MEMBERSHIP, URBAN, SUBURBAN, AND RURAL COUNTIES JOIN TOGETHER TO BUILD EFFECTIVE, RESPONSIVE COUNTY GOVERNMENT. THE GOALS OF THE ORGANIZATION ARE TO: IMPROVE COUNTY GOVERNMENT; SERVE AS THE NATIONAL SPOKESMAN FOR COUNTY GOVERNMENT; ACT AS A LIAISON BETWEEN THE NATION'S COUNTIES AND OTHER LEVELS OF GOVERNMENT; ACHIEVE PUBLIC UNDERSTANDING OF THE ROLE OF COUNTIES IN THE FEDERAL SYSTEM.

ALTHOUGH WE FULLY SUPPORT THE PURPOSES AND OBJECTIVES OF LEGALIZATION, NACo'S SUPPORT FOR LEGALIZATION IS CONTINGENT UPON ADEQUATE FEDERAL REIMBURSEMENT OF ANY ADDITIONAL COSTS ACCRUING TO COUNTY BUDGETS, AS WELL AS UPON STRONG ENFORCEMENT MEASURES.

OUR ASSOCIATION IS CONCERNED ABOUT THE ADEQUACY OF PROTECTIONS YOUR BILL CONTAINS FOR LOCAL GOVERNMENTS AGAINST THE POTENTIAL FOR INCREASED COSTS OF HEALTH, WELFARE, AND EDUCATION FOR NEWLY LEGALIZED ALIENS. THE SENATE LAST YEAR WAS RESPONSIVE TO THESE CONCERNS BY PROVIDING A BLOCK GRANT OF UNSPECIFIED SIZE THAT WOULD REIMBURSE STATES AND COUNTIES FOR NET COSTS OF HEALTH AND WELFARE PROVIDED TO LEGALIZED IMMIGRANTS, BUT STOPPED SHORT OF ASSURING COUNTIES THAT THE FEDERAL GOVERNMENT WILL BE FULLY RESPONSIBLE FOR, OR EVEN SHARE EQUALLY, IN ANY COSTS THAT MIGHT ARISE FROM THE LEGALIZATION OF MILLIONS OF PERSONS.

COUNTIES OFTEN ARE RESPONSIBLE FOR PROVIDING HEALTH, WELFARE, AND SOCIAL SERVICES TO PERSONS RESIDING WITHIN THEIR BOUNDARIES, REGARDLESS OF LEGAL STATUS. THEREFORE, FEDERAL IMMIGRATION POLICIES CAN HAVE A DIRECT COST IMPACT ON COUNTIES WHERE CONCENTRATION OF LEGALIZATION WILL OCCUR.

SINCE BOTH THE NUMBERS OF LEGALIZED PERSONS AND THE LOCAL ASSISTANCE PROGRAMS WILL VARY BY AREA, A BLOCK GRANT REIMBURSEMENT APPROACH WOULD LIKELY PROVE INADEQUATE FOR COSTS IN CERTAIN HEAVILY IMPACTED AREAS. RESTRICTIONS IN THE BILL ON ELIGIBILITY FOR FEDERAL ASSISTANCE PROGRAMS WILL FORCE SOME COUNTIES, ESPECIALLY IN CALIFORNIA, NEW YORK, AND MY OWN STATE, TO BEAR COSTS OF HEALTH CARE AND LOCAL ASSISTANCE FOR LEGALIZED ALIENS WHO BECOME NEEDY.

I RECOGNIZE THAT MOST PERSONS BECOMING LEGALIZED WILL HAVE AT LEAST A THREE YEAR RECORD OF EMPLOYMENT IN THE U.S., AND THAT THEY WILL HAVE PASSED THE "PUBLIC CHARGE" TEST. YET, WE MUST ALSO RECOGNIZE THAT MANY ILLEGAL IMMIGRANTS ARE EMPLOYED AT MINIMUM WAGES OR OTHER JOBS THAT DO NOT OFFER ADEQUATE HEALTH CARE PROTECTION, NOR A TRUE HEDGE AGAINST DESTITUTION WHEN UNEMPLOYMENT STRIKES. WITHOUT ARGUING THE PROJECTED NUMBERS OR COSTS, I THINK IT'S FAIR TO ASSUME THAT A GOOD NUMBER OF NEWLY LEGALIZED RESIDENTS ARE LIKELY TO EXPERIENCE UNEMPLOYMENT AND NEED FOR LOCAL HEALTH AND PUBLIC ASSISTANCE; AND THAT THE COSTS OF SUCH ASSISTANCE WOULD FALL DISPROPORTIONATELY

ON THE RELATIVELY FEW LOCAL GOVERNMENTS THAT HAVE LARGE NUMBERS OF IMMIGRANTS AND A MANDATED OR TRADITIONAL RESPONSIBILITY TO PROVIDE FOR THE INDIGENT.

FURTHER, I RECOGNIZE THAT YOUR BILL WOULD PERMIT STATES AND LOCAL GOVERNMENTS TO DENY ASSISTANCE AND HEALTH CARE TO LEGALIZED ALIENS, IN KEEPING WITH THE FEDERAL RESTRICTIONS THAT WOULD BE IN PLACE. BUT WE ARE SKEPTICAL THAT PLACING A BAN ON HEALTH CARE ELIGIBILITY WOULD EFFECTIVELY KEEP COSTS DOWN, BECAUSE REMOVING THE FEAR OF DETECTION AND DEPORTATION WILL ENABLE NEEDY IMMIGRANTS TO MAKE USE OF SERVICES WHICH THEY CURRENTLY POSTPONE OR DO WITHOUT, ESPECIALLY HEALTH CARE.

AT A MINIMUM, SENATOR, WE BELIEVE THAT THE FEDERAL GOVERNMENT SHOULD SHARE FULLY IN THE COSTS OF ANY LOCAL ASSISTANCE ARISING FROM LEGALIZATION. TO LEAVE LOCAL GOVERNMENTS WITH THE RISK OF ABSORBING COSTS ABOVE THE BLOCK GRANT IS SIMPLY TO ABANDON FEDERAL RESPONSIBILITY FOR CONSEQUENCES OF THE DECISION TO LEGALIZE THE STATUS OF MILLIONS OF PERSONS.

A RANGE OF ALTERNATIVES CAN BE CONSIDERED TO MINIMIZE THE POTENTIAL ADVERSE COSTS ON LOCAL GOVERNMENTS. FOR EXAMPLE, IF THE RESTRICTION ON ELIGIBILITY TO FEDERAL ASSISTANCE PROGRAMS IS REMOVED, THE FEDERAL GOVERNMENT WOULD THEN AT LEAST SHARE EQUALLY IN THE RISK AND THE COSTS OF MEDICAID AND AFDC. THE BLOCK GRANT WOULD THEN BE AVAILABLE TO PAY FOR UNREIMBURSED HEALTH CARE AND GENERAL ASSISTANCE FOR INDIGENT LEGALIZED IMMIGRANTS.

FINALLY, THE PROVISION FOR REIMBURSEMENT WOULD HAVE TO BE AMENDED TO DELETE THE TERM "NET" EXPENDITURES. THE CONCEPT OF DETERMINING NET COSTS OF ASSISTANCE IS PROBLEMATIC FOR SEVERAL REASONS:

- FIRST, THE TAXES THAT THE LEGALIZED IMMIGRANTS ARE PRESUMED TO HAVE PAID THROUGH PRIOR EMPLOYMENT ARE ALMOST EXCLUSIVELY STATE AND FEDERAL TAXES. COUNTIES GENERALLY DO NOT COLLECT SALES OR INCOME TAXES, AND MUST RELY ON PROPERTY TAXES TO PAY ASSISTANCE AND HEALTH COSTS. SO THERE IS NO REASONABLE EXPECTATION THAT NEEDY IMMIGRANTS WILL HAVE PAID TAXES SUFFICIENT TO OFFSET LOCAL COSTS.
- SECOND, THE PROCESS OF DETERMINING ANY NET COST WOULD RENDER THE SYSTEM INEFFECTIVE AND MEANINGLESS, MAKING IT UNLIKELY THAT EVEN JURISDICTIONS WITH SUBSTANTIAL COSTS WOULD BE ABLE TO COLLECT REIMBURSEMENT FROM THE FEDERAL GOVERNMENT.

THE REST OF MY STATEMENT SETS FORTH OUR POSITIONS AND RECOMMENDATIONS ON THE OTHER KEY PROVISIONS OF THE BILL.

EMPLOYER SANCTIONS AGAINST HIRING ILLEGAL ALIENS

NACo STRONGLY SUPPORTS CIVIL PENALTIES FOR EMPLOYERS WHO HIRE ILLEGAL ALIENS. IT IS OUR POSITION THAT EMPLOYER SANCTIONS ARE A NECESSARY FACTOR IN CURBING ILLEGAL IMMIGRATION.

ALTHOUGH NACo SUPPORTS SANCTIONS ON EMPLOYERS WHO HIRE ILLEGAL ALIENS, WE BELIEVE THEY SHOULD NOT BE APPLIED TO THE RECRUITMENT OR REFERRAL OF INDIVIDUALS FOR EMPLOYMENT. BECAUSE MANY MORE PERSONS ARE RECRUITED OR REFERRED THAN ARE HIRED FOR EMPLOYMENT, MONITORING RECRUITMENTS AND REFERRALS WILL BE A COSTLY ADMINISTRATIVE BURDEN FOR BOTH THE FEDERAL GOVERNMENT AND PUBLIC AND PRIVATE EMPLOYMENT AGENCIES.

WITH REGARD TO AN IDENTIFICATION SYSTEM FOR EMPLOYMENT ELIGIBILITY, NACo SUPPORTS THE USE OF EXISTING FORMS OF IDENTIFICATION THAT THE ACT SPECIFIES WOULD BE USED DURING THE FIRST THREE YEARS AFTER ITS ENACTMENT. HOWEVER, NACo OPPOES THE IMPLEMENTATION OF A NATIONAL IDENTIFICATION SYSTEM TO DETERMINE EMPLOYMENT ELIGIBILITY. THE SYSTEM WOULD POSE A POTENTIAL THREAT TO CIVIL LIBERTIES. ADDITIONALLY, NACo QUESTIONS WHETHER THE BENEFITS OF INSTITUTING A WORK AUTHORIZATION SYSTEM WOULD OUTWEIGH ITS ADDED COSTS--WHICH COULD EXCEED ONE BILLION DOLLARS.

NACo DOES SUPPORT STIFF PENALTIES FOR THE SALE, DISTRIBUTION, USE OR POSSESSION OF COUNTERFEIT DOCUMENTS. STRONG ENFORCEMENT EFFORTS AGAINST THE USE OF FALSE DOCUMENTS WOULD REDUCE ANY NEED TO DEVELOP A UNIVERSAL IDENTIFICATION SYSTEM.

BORDER ENFORCEMENT

NACo STRONGLY SUPPORTS PROVISIONS IN THE BILL WHICH CALL FOR AN INCREASE IN BORDER AND INTERIOR ENFORCEMENT EFFORTS TO CURB ILLEGAL IMMIGRATION. WE BELIEVE THAT THE IMMIGRATION AND NATURALIZATION SERVICE (INS) HAS NOT RECEIVED SUFFICIENT FUNDS AND RESOURCES TO ENABLE IT TO EFFECTIVELY CARRY OUT ITS RESPONSIBILITY TO PREVENT ILLEGAL ENTRY INTO THE U.S.

TEMPORARY WORKERS

WE ARE PLEASED THAT THE ACT WOULD NOT ESTABLISH A NEW TEMPORARY WORKER PROGRAM. IN THIS TIME OF HIGH UNEMPLOYMENT, WE BELIEVE THAT

TEMPORARY WORKERS CAN HAVE THE SAME DETRIMENTAL EFFECTS ON THE DOMESTIC LABOR MARKET AS DO ILLEGAL ALIENS--THAT IS, THEY CAN TAKE AWAY JOBS FROM AMERICAN WORKERS AND DEPRESS WAGES.

NACo DOES NOT OPPOSE THE PROPOSED CHANGES IN THE EXISTING H-2 PROGRAM, PROVIDED AT LEAST THREE CONDITIONS ARE MET:

- FIRST, AN ANNUAL CEILING SHOULD BE PLACED ON THE NUMBER OF FOREIGN WORKERS ADMITTED UNDER THIS PROGRAM TO ENSURE THAT THE PROPOSED CHANGES DO NOT RESULT IN A SIGNIFICANT INCREASE IN THE NUMBERS ADMITTED INTO THE U.S. JUST AS AN ANNUAL CEILING IS IMPOSED ON LEGAL IMMIGRATION INTO THE COUNTRY, A CEILING SHOULD ALSO BE IMPOSED ON THE NUMBERS OF FOREIGN H-2 WORKERS ADMITTED ANNUALLY.

- SECOND, THE EXEMPTIONS FROM SOCIAL SECURITY AND UNEMPLOYMENT INSURANCE TAXES CURRENTLY GIVEN TO EMPLOYERS OF H-2 WORKERS SHOULD BE ELIMINATED. THESE EXEMPTIONS ARE ECONOMIC INCENTIVES FOR EMPLOYERS TO HIRE FOREIGN LABOR INSTEAD OF AMERICAN WORKERS.

- THIRD, LANGUAGE SHOULD BE ADDED TO THE ACT TO ENSURE THAT H-2 WORKERS DO NOT BURDEN LOCAL PUBLIC HEALTH CARE FACILITIES, WHICH ARE MANDATED TO PROVIDE CARE TO ALL PERSONS, REGARDLESS OF THEIR LEGAL STATUS OR ABILITY TO PAY. ONE POSSIBILITY WOULD BE TO REQUIRE THAT ALL H-2 WORKERS HAVE PRIVATE HEALTH INSURANCE COVERAGE TO BE PAID BY THE EMPLOYER AND/OR H-2 WORKER. NACo FIRMLY BELIEVES THAT THE ALREADY FINANCIALLY STRAPPED LOCAL PUBLIC HOSPITALS SHOULD NOT HAVE TO BEAR ADDED COSTS RESULTING FROM THE ENTRY OF FOREIGN WORKERS.

WE SUPPORT THE PROPOSAL TO AUTHORIZE AN ANNUAL APPROPRIATION OF $10 MILLION FOR THE PURPOSE OF RECRUITING DOMESTIC WORKERS FOR JOBS WHICH WOULD OTHERWISE BE PERFORMED BY FOREIGN H-2 WORKERS, AND FOR MONITORING THE TERMS AND CONDITIONS UNDER WHICH H-2 WORKERS ARE EMPLOYED IN THE U.S.

LEGALIZATION PROGRAM

NACo SUPPORTS THE ESTABLISHMENT OF A NATIONAL PROGRAM TO LEGALIZE THE STATUS OF ILLEGAL ALIENS WHO CAN DEMONSTRATE CONTINUOUS RESIDENCE IN THE U.S. FOR THREE YEARS OR MORE, AND WHO ARE NOT OTHERWISE EXCLUDABLE. WE SUPPORT A LEGALIZATION PROGRAM IF TWO CONDITIONS ARE MET:

- FIRST, THE FEDERAL GOVERNMENT TAKES STRONG ENFORCEMENT MEASURES, INCLUDING EMPLOYER SANCTIONS, TO CONTROL ILLEGAL IMMIGRATION

- SECOND, COUNTIES AND STATES ARE FULLY REIMBURSED FOR COSTS RESULTING FROM A LEGALIZATION PROGRAM.

WITHOUT STRONG ENFORCEMENT AT U.S. BORDERS, LEGALIZING THE STATUS OF ILLEGAL ALIENS CURRENTLY RESIDING IN THE U.S. WOULD SERVE AS AN OPEN INVITATION FOR ADDITIONAL PERSONS TO ENTER THIS COUNTRY ILLEGALLY IN ANTICIPATION OF QUALIFYING UNDER A FUTURE LEGALIZATION PROGRAM.

NACo'S SUPPORT FOR A LEGALIZATION PROGRAM ALSO DEPENDS UPON WHETHER THE FEDERAL GOVERNMENT BEARS FINANCIAL RESPONSIBILITY FOR THE COSTS OF IMPLEMENTING THE PROGRAM. THREE TO SEVEN MILLION ILLEGAL ALIENS ARE IN THIS COUNTRY TODAY BECAUSE OF THE FEDERAL GOVERNMENT'S FAILURE TO CONTROL OUR NATION'S BORDERS. STATES AND LOCALITIES SHOULD NOT HAVE TO BEAR THE COSTS OF A FEDERALLY CREATED PROBLEM.

CONSEQUENTLY, NACo IS VERY CONCERNED ABOUT THE COSTS COUNTIES WILL INCUR FROM A LEGALIZATION PROGRAM. ALTHOUGH THE IMPACT ASSISTANCE BLOCK GRANT IS PREFERRED OVER NO FEDERAL ASSISTANCE, THE BLOCK GRANT, AS IT IS CURRENTLY PROPOSED, HAS A NUMBER OF VERY SERIOUS FLAWS.

FIRST, UNDER THE PROPOSED BILL, A PERMANENT RESIDENT ALIEN IS INELIGIBLE FOR FEDERAL PROGRAM BENEFITS FOR THE THREE YEAR PERIOD FOLLOWING THE DATE OF HIS/HER LEGALIZATION. MAKING LEGALIZED ALIENS INELIGIBLE FOR FEDERAL ASSISTANCE, INCLUDING AFDC, SSI, MEDICAID AND FOOD STAMPS, SHIFTS THE ENTIRE BURDEN TO STATES AND LOCALITIES TO MEET THEIR NEEDS.

UNDER THE BLOCK GRANT, MONIES WOULD BE ALLOCATED USING THE AMOUNT OF "NET EXPENDITURES" THE STATE IS LIKELY TO INCUR IN ASSISTING THE LEGALIZED ALIENS IN THE STATE. NACo IS CONVERNED THAT THIS FORMULA FALLS FAR SHORT OF ADEQUATELY REIMBURSING STATES AND LOCALITIES. NACo SEES TWO MAJOR DRAWBACKS TO THIS PORTION OF THE BILL:

1. FUNDS ALLOCATED BASED ON NUMBERS OF LEGALIZED ALIENS. NACo BELIEVES THAT ~~THE ACTUAL~~ PUBLIC ASSISTANCE EXPENDITURES INCURRED BY JURISDICTIONS WILL NOT NECESSARILY REFLECT THE NUMBER OF LEGALIZED ALIENS WITHIN A STATE. WELFARE DEPENDENCY RATES FOR LEGALIZED ALIENS ARE LIKELY TO VARY SIGNIFICANTLY BETWEEN STATES, AS THEY DO FOR THE GENERAL POPULATION. ALSO, PUBLIC ASSISTANCE AND HEALTH CARE PROGRAMS VARY SIGNIFICANTLY BETWEEN STATES. STATE AND LOCAL ELIGIBILITY REQUIREMENTS, BENEFIT LEVELS, AND THE AVAILABILITY OF ASSISTANCE WOULD AFFECT THE

COST OF ASSISTING LEGALIZED ALIENS, AND ARE, THEREFORE, NOT NECESSARILY RELATED TO POPULATION.

2. NET EXPENDITURES. ALTHOUGH THE TERM "NET EXPENDITURES" IS NOT DEFINED IN THE BILL NOR IN LAST YEAR'S LEGISLATIVE HISTORY, NACo UNDERSTANDS THAT IT WOULD MEAN CALCULATING THE TOTAL AMOUNT OF TAX REVENUES COLLECTED FROM LEGALIZED IMMIGRANTS PRIOR TO RECEIPT OF PUBLIC ASSISTANCE AND HEALTH CARE, BEFORE ALLOCATING FEDERAL FUNDS TO STATES AND LOCALITIES. THE BULK OF ANY TAX REVENUES FROM IMMIGRANTS WOULD BE IN THE FORM OF FEDERAL AND STATE INCOME, SALES, AND SOCIAL SECURITY TAXES, NOT FROM THE PROPERTY TAXES, WHICH FUND COUNTY HEALTH AND WELFARE PROGRAMS.

EVEN IF THIS CONCEPT MADE SENSE, IT WOULD BE ADMINISTRATIVELY IMPOSSIBLE TO ACCURATELY ESTIMATE TAX REVENUES PAID BY LEGALIZED ALIENS. WITHOUT ESTABLISHING A BUREAUCRACY TO MONITOR SALES TAXES, PROPERTY TAXES AND STATE AND LOCAL TAXES, ANY TAX REVENUE ESTIMATES WOULD BE MERELY EDUCATED GUESSES.

NACo PROPOSES THAT FEDERAL FUNDS FOR LEGALIZED ALIENS BE BASED ON A FULL REIMBURSEMENT BASIS. THIS APPROACH WOULD TIE THE LEVEL OF FEDERAL AID TO ACTUAL EXPENDITURES INCURRED BY JURISDICTIONS PROVIDING ASSISTANCE TO LEGALIZED ALIENS. EXPENDIUTRE DATA IS MUCH MORE ACCURATE AND EASIER TO COLLECT THAN EITHER POPULATION OR TAX REVENUE DATA ON LEGALIZED ALIENS.

IN CLOSING, NACo IS SUPPORTIVE OF THE BASIC THRUST OF THE BILL, WHICH IS TO ACHIEVE GREATER CONTROL OVER IMMIGRATION--LEGAL AND ILLEGAL--INTO THE U.S. HOWEVER, WE REMAIN CONCERNED THAT THE ACT DOES NOT PROVIDE FOR FULL FEDERAL FINANCIAL RESPONSIBILITY FOR THE COSTS AND IMPACTS OF IMMIGRATION POLICIES ON STATE AND LOCAL GOVERNMENTS. IT IS OUR FIRM POSITION THAT THE FEDERAL GOVERNMENT, WHICH IS RESPONSIBLE FOR BOTH DETERMINING AND IMPLEMENTING NATIONAL IMMIGRATION POLICIES--INCLUDING CONTROLLING OUR BORDERS AGAINST ILLEGAL ENTRY--SHOULD ALSO BE RESPONSIBLE FOR THE COSTS AND IMPACTS OF SUCH POLICIES, OTHERWISE, IT IS ALL TOO EASY FOR THE FEDERAL GOVERNMENT TO OVERLOOK THE FISCAL IMPACTS OF IMMIGRATION ON OTHER LEVELS OF GOVERNMENT.

THANK YOU FOR THE OPPORTUNITY TO SPEAK BEFORE YOU. I AM PREPARED TO ANSWER ANY QUESTIONS YOU MAY HAVF.

Senator SIMPSON. David Pingree, please. Nice to see you.

STATEMENT OF DAVID PINGREE

Mr. PINGREE. Mr. Chairman, thank you for the opportunity to be here today to present testimony on behalf of Governor Graham, in his role as chairman of the National Governors' Association Task Force on Immigration and Refugee Issues.

Repeatedly, the Governors of this Nation have proclaimed the critical need for this country to regain and maintain control of its borders.

This afternoon, I will concentrate my brief remarks on three areas: legalization, the asylum, and exclusion process, and Presidential emergency power.

The Governors have expressed two grave concerns about the consequences of legalization. Legalizing the status of illegal aliens could make an untold number of people—perhaps several millions—eligible for assistance they could not claim under their former illegal status.

While the Senate bill would allow State and local governments to make legalized aliens ineligible for cash and medical assistance, this provision raises two fundamental questions. First, would such an exclusion stand the test of constitutional challenge? Second, who, in fact, would bear the responsibility for providing necessary assistance—voluntary agencies, the United Nations, or State and local governments from their already inadequate resources?

This is a risk that State and local governments cannot, and should not, be asked to take. The Federal Government must flatly accept responsibility for all costs associated with providing services to legalized aliens. After all, controlling the Nation's borders and managing a national immigration policy are responsibilities of the Federal Government, not State and local governments.

The Senate bill does authorize a block grant to help meet anticipated increased costs. However, I would respectfully submit that this simply is not enough, a position firmly held not only by the National Governors' Association but also the National Conference of State Legislatures.

The Federal Government must not abdicate its responsibility for totally funding services extended to legalized aliens. State and local governments cannot bear the brunt for the potentially inordinate costs resulting from legalization. Full Federal reimbursement for the costs of services must be provided.

The National Governors' Association's second concern is that the flow of illegal aliens into the United States after legalization still would continue. The potential for ongoing illegal immigration will remain until there is a workable and enforceable national immigration law and policy in effect. And until the lure of jobs is eliminated by a prohibition on the hiring of illegal aliens.

I must convey to you Governor Graham's continued personal opposition to legalization as proposed. The Governor maintains that legalization should be considered only after the U. S. Attorney General or, perhaps even better, the General Accounting Office certifies to Congress that new measures to stop illegal immigration are, in fact, in place, working and being enforced. In essence, we in

Florida want assurance that the Immigration Reform Act, once enacted, is fully operational before the legalization section of the law would be triggered. We do not want the United States to continue sending signals to the people of the Caribbean, Central America, and other parts of the world that if only you can reach our shores, you will be permitted to stay, eventually granted legal status, and ultimately made a citizen.

Relative to the asylum and exclusion process, the National Governors' Association sees a critical need to provide fair and expeditious review of asylum cases.

Current estimates indicate that there is now a backlog of more than 140,000 people awaiting asylum proceedings. This does not include the thousands of Cuban and Haitian entrants. Clearly the existing system is woefully inadequate.

Yet still today, the processes for asylum and exclusion have yet to be rebuilt.

My final point this afternoon addresses the issue of Presidential emergency authority.

The National Governors' Association supports the proposal to provide the President with necessary emergency authority to act quickly and decisively in the face of an unexpected mass immigration of people seeking asylum in this country.

Governor Graham, in addition, feels that the issue of emergency authority is interrelated to the matter of contingency planning. While it is encouraging that the Federal Government has drafted a contingency plan, the Governor has some reservations about the plan's lack of detail and the limited review of the plan by State and local governments. Florida is a State that knows all too well the consequences of not having a detailed contingency plan when faced by an unprecedented mass immigration. Therefore, the Governor feels that comprehensive review of any contingency plan by representatives of State and local government is essential.

In closing, I too would like to thank you, Senator, for your personal efforts and that of your staff for having come to Florida last year and observing firsthand the problems that we have experienced since 1980 and achieving the personal understanding of what we faced.

On behalf of the National Governors' Association, and Governor Graham and myself, I thank you for the opportunity to be here today.

Senator **Simpson**. Thank you, David. Persons such as yourself have brought the issue fully to our attention, and that has been extraordinarily helpful to the subcommittee of the House and the Senate.

James Krauskopf, please.

STATEMENT OF JAMES KRAUSKOPF

Mr. **Krauskopf**. Mr. Chairman, I am here representing both the Human Resources Administration of New York City and the U.S. Conference of Mayors, and I too appreciate both the opportunity to appear and the diligence with which you and the committee have pursued this issue, hopefully to successful conclusion this year.

Although this is my first opportunity to appear before the Committee, I did have a chance to meet and talk with you in another setting last year, in one of the many meetings that you held in consulting on the legislation.

New York City has played a special historic role in welcoming newcomers to this country and assisting them in settling. We intend to continue this mission. We have more than 600,000 immigrants, refugees, and Cuban and Haitian entrants. We estimate that between 500,000 and 750,000 undocumented aliens are living in the city. We take a special interest in the kind of comprehensive change that this legislation is addressing, and we are hopeful that it will be successful.

We Understand the difficult task that the committee has taken on in developing this very complex legislation and in balancing the many factors involved. We will focus here on only those areas that are important to the cities and to the other governmental jurisdictions involved.

The bill precludes newly legalized individuals from eligibility for Federal assistance programs, including AFDC, medicaid, food stamps and other programs.

Our principal concern is that the potential costs for this proposal will be enormous for States and localities. The concern is felt by cities and counties from the Northeast to the Southwest that have large undocumented populations. The Federal Government which sets immigration policy must either permit legalized aliens to receive Federal benefits or to underwrite the State and local costs of providing services to this special population.

The committee has, to some extent, recognized this issue in Senate 529, by including an impact assistance block grant that recognizes some Federal responsibility for newly legalized aliens and the need for some form of reimbursement for local and State costs. But the block grant, as presently written, has major shortcomings.

There is no real assurance that there will be an adequate amount of reimbursement. The amount allocated to any individual State will depend on a formula—not yet fully developed—that will take into account the number of legalized aliens in a State, the number of legalized aliens compared to the State's total population, and the State's expected expenditures for public assistance and health care. But the formula does not accurately reflect things such as the extent of secondary migration that may accrue among the States, differences in cost of living different welfare and medicaid dependency rates, and different assistance levels that may cause some States and localities to have disproportionately high expenditures.

There is no real way to forecast the full costs of legalization. Of course, we are making estimates here because we do not know for certain the size of the eligible population, how many of those persons will come forward, and what their need for services may be in the future. But what we are asking for is that the risk—and I know that in the past you have stressed that this risk may actually be smaller than some of us feel it may be—will be divided between the Federal Government, the States, the counties and the cities. We seek assurances that it not be an expense that is borne essentially at the local level. Only a mechanism that guarantees reimbursement of actual State and local expenditures can accomplish this objective.

A second concern we have is the provision for reimbursement only of net costs, net of the amount of State and local taxes that are paid by participants in the legalization process. This is a very unusual precedent and one that I think would be undesirable for local, State and Federal programs in general, and especially in this program. The provision ignores the fact that legalized aliens will be utilizing other local services, transportation, sanitation, fire, police, et cetera. We hope that you will reject this provision for establishing the reimbursement based on a net figure from local taxes.

The House provision in last year's bill for 100 percent Federal reimbursement for medical and public assistance costs for 4 years was a more desirable provision from our point of view, and we hope that it might get consideration in the Senate as well.

New York, like many other States, has constitutional and local law provisions which require the care of the needy. This means that if there is not Federal reimbursement, we, the State and locality must pick up the cost and provide for the care of such people. This would be a great added burden to our taxpayers at a time when we are coping with severe cutbacks in other Federal programs that serve needy populations. I need not detail for the committee the extent of the cutbacks that we have incurred in the last 2 years in those programs.

Let me close by saying again that, like my colleagues, we strongly support the efforts of the subcommittee and the Congress to resolve the many complex and important issues necessary to achieving reform in immigration. However, this reform cannot come at the expense of State and local governments. We hope that you will take into account the kinds of requests that we are making today for adequate reimbursement.

Thank you very much.

[The prepared statement of James Krauskopf follows:]

PREPARED STATEMENT OF JAMES A. KRAUSKOPF

Mr. Chairman and members of the Subcommittee, I am Jack Krauskopf, Commissioner of the Human Resources Administration in New York City. I appreciate this opportunity to testify today on behalf of New York City and the United States Conference of Mayors and its affiliate the Conference of City Human Services Officials on S. 529 "The Immigration Reform and Control Act of 1983."

New York City has played a special historical role in welcoming newcomers to this country and in assisting those in need. We intend to continue this mission. As home to over 600,000 immigrants, refugees, and Cuban and Haitian entrants, as well as an estimated 500,000 to 750,000 undocumented aliens, New York City takes a special interest in the proposed comprehensive change in our national immigration policies.

While the 1980 census shows a new mix of nationalities among New York's foreign born population, their needs are similar to those of our parents and grandparents—decent work opportunities, a better life for their families, and a haven from political or economic oppression. Our undocumented population shares many of these goals as well.

We commend the Subcommittee for having taken on an enormously complex task in developing this legislation. The Chairman and Subcommittee members have built upon the recommendations of the Select Commission on Immigration and Refugee Policy and President Reagan's Task Force on Immigration and refugee Policy to produce a package of carefully balanced measures, including a legalization program which would address the needs of many aliens now living in fear in our country and other measures to deter future entries. The legalization program would grant permanent resident status for undocumented aliens who have continuously resided in the United States since 1977, and temporary resident status for those who can document continuous residence since 1980.

The bill precludes the newly legalized population from eligibility for federal assistance programs, including AFDC, Medicaid and Food Stamps and other programs. At the same time the newly legalized population would be eligible for state and locally funded public assistance and social services programs. In the case of temporary residents, the prohibition against receiving federal assistance would last six years; for permanent residents, the prohibition period would be three years.

Our principal concern is the potential costs that this proposal will generate for states and localities. This concern is shared by cities and counties from the Northeast to the Southwest that have large undocumented populations. The federal government, which sets immigration policy, must either permit legalized aliens to receive federal benefits or underwrite the state and local costs of providing services to this special population.

Mr. Chairman, by including in S. 529 an impact assistance block grant for states, this Subcommittee has recognized a federal fiscal responsibility for newly legalized aliens and the need for some form of reimbursement for local and state costs resulting from this legalization. However, the block grant, as presently written, has several major shortcomings.

First, there is no assurance of an adequate amount of reimbursement. The amount allocated to any individual state will depend on a formula that has yet to be determined. It takes into account the number of legalized aliens in a state, the number of legalized aliens in a state compared to the State's total population, and the State's expected expenditures for the public assistance and health care needs of its legalized aliens. This formula is unlikely to accurately reflect the extent of secondary migration among the states or the differing costs of living, welfare and Medicaid dependency rates, and assistance levels that will result in disproportionately high expenditures in a small number of states and major cities.

While there is no way to forecast the full costs of legalization because of uncertainty about the size of the eligible population, how many will come forward, and their need for services in future years, the risk of high expenditures should not be placed only on the states and localities. Financially strapped localities and state governments need assurances in advance that the federal government will share this risk. Only a mechanism that guarantees rembursement of actual state and local expenditures can accomplish this.

Second, the block grant proposed in S. 529 would provide reimbursement only of "net" state and local expenditures. This means that the amount of federal reimbursement will be determined only after deducting state and local taxes paid by participants in the legalization program. This would set an undesirable precedent for future local, state, and federal relations. This provision ignores the use by legalized aliens of other local services, such as subways, fire protection, sanitation, streets, and police protection, which primarily rely on local taxes for support. We hope that the Senate will reject this provision and the overall block grant approach to funding state and local costs of legalization.

The House last year adopted a different approach. Its bill provides for 100 percent federal reimbursement to states and localities for the medical and public assistance costs of legalization for four years, subject to annual appropriations. In addition, it allows federal aid for blind, aged and disabled people, and emergency health care for both permanent and temporary residents. While the House approach also permits Congress to set a ceiling on funds available every year, it does guarantee affected localities a certain level of reimbursement based on actual costs. We in New York City and in cities around the country strongly favor this approach. Federal reimbursement proposals must maintain the principle of federal assistance for actual costs incurred so that a new federal policy towards undocumented aliens does not unfairly shift the economic burden to states and localities.

A significant federal share in the financial burden is crucial to cities like New York with large concentrations of undocumented aliens. Cities, counties and states have already been forced to absorb tremendous budget reductions in federal programs, particularly in those public assistance and social services programs legalized aliens might turn to in times of need. For example, in 1983, New York City lost over $870 million in federal funds, including cutbacks in public assistance, CETA, Medicaid and the block grants. The loss in federal block grant funds this past year totalled $34 million, including approximately $18 million from the Social Services Block Grant, $9 million from the Education Block Grant and $5 million from the Community Services Block Grant. Contrary to their intended goal of allowing states more discretion and reducing administrative costs, the creation of block grants has consistently resulted in a reduction of federal funds. There is no cushion in our local budgets to absorb added assistance expenditures. It is understandable, given this history, that we are seeking additional assurances of adequate funding.

A state like New York must serve the needy according to its State Constitution and laws. Presently, the undocumented population has no right to social welfare benefits. The proposed legislation, however, would create a large pool of legalized persons barred from federal benefits for a period of three to six years, but eligible for state and local benefits during that time. We know from experiences that temporary emergencies, illnesses, or periods between jobs can result in a reliance on governmental assistance, even among a hard-working population unaccustomed to needing help. Because of the paucity of data on undocumented aliens, it is impossible to furnish accurate projections of New York City's costs were a legalization program implemented. Yet, our preliminary forecasts indicate costs in the tens of millions of dollars annually. Our estimates are based on the dependency rate of the general population and not the dependency rates of refugees, who may have special needs.

In New York City, benefits that would be available to newly legalized persons include General Assistance, Medicaid, social services, vocational training, day care and other programs. General assistance and medical costs are expected to be a substantial portion of the state and local costs resulting from this legislation.

Other cities share our concern about the costs of providing needed services to legalized aliens. For example, officials in Orange County California estimate that there are 150,000 to 200,000 undocumented aliens, with 40,000 to 50,000 of them in Santa Ana alone. The cost resulting from legalization there could easily be in the tens of millions of dollars. In Denver, a city of over 400,000, there are an estimated 10,000 undocumented aliens living in its limits. Officials there estimate that legislization would cost the city approximately $1 million per year for increased welfare and social services, and the $1.4 million it is already spending to provide health care to undocumented aliens would increase substantially as people seek additional medical care.

We strongly believe that the costs of legalization are a federal responsibility. The federal government is in charge of national border enforcement and overall immigration policies. We are today discussing a bill that may drastically change the status of millions of individuals who entered this country or remained here due to federal policies. Yet, certain state and local taxpayers could be required to bear a major portion of the costs of this federal decision.

In conclusion, we support the efforts of the Subcommittee and the Congress to grant legal status to undocumented aliens who have established roots in this country. However, we believe strongly that the federal government should demonstrate its commitment to this newly legalized population by providing adequate assistance to state and local governments for their increased expenditures.

Senator SIMPSON. Thank you very much.

Let me ask the three of you, really, if you could respond briefly. Would you support any legalization program without employer sanctions? [Pause.]

You thought it was going to take a long time to ask that question, did you not?

Mr. RUVIN. Any legalization?

Senator SIMPSON. That is right. Would you support any legalization program without having employer sanctions?

Mr. RUVIN. I can only say that I think I would. I think that there is a great deal of justice involved in the legalization program. I think that it certainly would not only be a humane thing to do but a very cost-effective thing to do when you contemplate perhaps 5 million deportation hearings and their costs.

Senator SIMPSON. Yes, Dave?

Mr. PINGREE. Mr. Chairman, I think that particular position would be the one that we would have the most difficulty with. I mean that legalization with or without, employer sanctions is where we have a problem. We want to support legislation and we do support the legislation that came out of this committee and out of the Senate last year. But if you start changing and taking out some of the things that we do feel are important, I think the National Governors' Association, as well as the State of Florida, would have to reconsider their positions.

We think it is absolutely crucial, essential that we have an immigration reform law passed that is workable and enforceable so we are with you. But we want it to be as strong as possible.

Mr. **Ruvin**. I feel strongly about what I just said, but I would also cap it by saying that we have two other conditions that we would want to still have if a legalization program without employer sanctions is enacted and that would be a full program for compensation reimbursement to the local and State governments and enforcement measures that would start to restrict and cut back on the flow.

Mr. **Krauskopf**. I think it is essential that it be an enforcement program that assures, to the extent it is possible, that people who should be here are people that are here legally. Whether employer sanctions is the only way to insure that, I cannot say. That is a matter that the committee certainly has studied more than we have tried to study in the city or at the Conference of Mayors.

The employer sanctions seem to be the means that has been suggested to date and the most feasible means. It certainly has imperfections, as has been pointed out in testimony to this committee, but if it is not employer sanctions, then it must be something else that offers some strong assurance of adequate enforcement.

But I would just again second what Harvey Ruvin said, that our primary concern here is the adequate fiscal compensation to State and local governments.

Senator **Simpson**. It is an interesting fact that those who do not wish to have employer sanctions do not furnish us alternatives. It is a curious argument that really fails of its own weight because you can argue all you wish about not having employer sanctions. And without employer sanctions, there will be no legalization given by this Congress. It is that simple. You can score it or render it or tack it on the wall or anything that you want, but that is the way it is and that is not Simpson speaking, that is my colleagues. And I favor legalization I can tell you.

But I think you may have heard, or you should have heard Father Ted Hesburgh's comments this morning that without that you will have nothing. Without legalization, without employer sanctions, without the identifier, there will be nothing, even if the American public believed that there was something, there would still be nothing. So that is, as I have always said, if you do not like employer sanctions or the identifier of new hire and legalization, give us an alternative but no fair quoting from the Statue of Liberty.

So you have all stated your support for legalization but you have reservations about the cost. And, Jim, I understand that one. You were very helpful. I attended your session last year, I remember that. The cost to counties, municipalities, States, because legalized aliens would utilize more services, at least that is the perception.

But do you concur at all with the view that most of the people coming to the United States under the magnet of jobs to work are in fact employed? Would you say that is generally so?

Mr. **Krauskopf**. If I might, I think people do not come in order to get onto public assistance and to become dependent on Government programs. Certainly people come because they perceive economic opportunities and they perceive a chance to work. However, that does not insure that they will be able to work, especially in periods of recession such as we are in and have been going through now, and it does not guarantee that people will not at some point have to rely on Government assistance. We think it is appropriate that the Federal Government recognize that and help us with whatever costs might result.

Senator **Simpson**. I understand that and I have no problem with that. I have stated that.

But the Select Commission studies, everything we have done leads us to believe that those who come—again these are migrants, economic migrants, we are not talking about refugees—that these people are young and single and come here to work and that they are not likely to go on to public assistance.

Do you show that or not?

Mr. **Pingree**. Well, many of the people coming to Florida did not come with jobs in hand or with the prospect of jobs and that was not necessarily the reason that they came so that perhaps we have a somewhat different perspective. I would let the Commissioner address this as well, and then, perhaps it should be addressed by those who have experience in the Southwest. Certainly we have done, we think, a pretty good job of moving people from an initial dependent status to an employed status. We have a relatively low dependency rate in Florida of those who came only 2½ years ago. But I do not think—it is just not quite as you depicted it. At least that has been my experience.

Senator **Simpson**. No, but your State is a unique cauldron because you have not only the economic migrant, or illegal undocumented alien, you have the refugee or asylee designee, and that is the difference. The dependency rate of a refugee in the United States varies from 40 percent to 90 percent of support systems required to sustain a refugee. We are of the opinion in the Select Commission and here that an immigrant, an illegal undocumented worker, will never even approach that figure because, that is, he came to work and if he did not find work, would return because he does not return then to persecution and civil strife. Interesting.

Mr. **Ruvin**. I was going to say our experience is different. Because the major influx of that aroused public concern in Florida and made Floridians feel like they were being abandoned by the Federal Government was the Cuban flotilla that paraded for a period of 6 months to Dade County, followed—continued along with the boat people from Haiti. I think obviously these people are looking for the same things that immigrants have always looked for and they have all looked to this country to find it, and that is a wonderful thing. I think that we are really concerned about it, not any of those precepts, simply the fact that it is unfair for those areas that are overly impacted to bear the cost and not to have those costs spread throughout——

Senator **Simpson**. I fully hear that but I want you to hear what I am saying too, that when we are talking about Cuban entrants and refugees and those fleeing for various reasons, we can all have a different view of that. But when we are talking about the 2,000 per month that are being smuggled into Florida, they are coming, I think, for one reason and that is to work.

Am I missing something?

Mr. KRAUSKOPF. Senator, even if the dependency rates of the undocumented people are no greater than the dependency rates of the general population, we would still have very substantial costs that we think the Federal Government ought to share with us.

Senator SIMPSON. OK; let me get it clear.

When you are using figures on the cost to take care of those that are here, I think that is a Federal responsibility. OK; we will start with that.

And then I am saying that when you are using figures that you use when you are dealing with the refugee population, I think you have really skewed your figures. That is what I am saying; got it?

Mr. PINGREE. Yes.

Senator SIMPSON. Do you agree with that?

Mr. PINGREE. I think it is a reasonable representation.

Senator SIMPSON. That is what I am saying.

Mr. RUVIN. I have not heard any specific examples of that here today. I am not sure what you are referring to.

Senator SIMPSON. Just the trouble we find with the facts of the issues through 2 years of testimony. Those who come as refugees and special entrants, or any other category in that area, are required to have sizable public assistance, which I think is a Federal responsibility in this instance. Those who are illegal undocumented workers, too, are going to require something, and our bill provides it, but we say that what they require is far, far removed from what the refugee population or the other designated persons require.

Mr. RUVIN. I do not think that that general statement applies to the Cuban-Haitian refugee problem.

Senator SIMPSON. It does not?

Mr. RUVIN. No; because I think the kinds of costs that are related there, to particularly the health delivery system in south Florida was enormous.

Senator SIMPSON. Well, nothing much has changed if you go back and look what the cost to the United States was for the original Cuban exodus. That was a tremendous figure and worth every cent because of what occurred. But I think that you ought to keep that in mind, too.

Mr. RUVIN. Senator, I think it is tiue. I think that certainly your staff and yourself are familiar with the demographics of the two situations. We had the first, the people who left Cuba were essentially the best educated, and some of the wealthiest people and some of those people that were able to take care of themselves and assimilate into any place that they would excel to. And the recent flow of persons frankly were not in that category. Many of them were at least directly from institutions where they were dependent upon the State.

Senator SIMPSON. I think we put our money where our mouth is and so, you know, that is what we will continue to do. And so the substantial costs are very real, the cost of health care furnished to illegal aliens, for instance. I would just like quickly, if you could, share with me what other costs are there from State and local governments resulting from uncontrolled migration, not from refugee populations.

Mr. Ruvin. If I can start off to suggest one. In the particular instance that I am familiar with, clearly, and Senator Hawkins testified yesterday, extraordinary impact on our criminal justice system, remains extraordinary in fact.

We are presently in Dade County under court order, Federal court order I might add, to reduce our populations in our prisons up to a level of capacity. There may be 300 or 400 in the county jail, maybe 300 or 400 persons above that capacity. Yet, when we look at those rows of prisoners, we find most of them awaiting trial, that we have 350 that came here since April 1980. And we cannot get the Federal Government to really fully respond to that situation.

There is many other ways, almost every way you can think of, that a citizen impacts or takes advantage of some service within his community that is relatable to these persons.

Senator Simpson. Do you have anything to say to that?

Mr. Krauskopf. New York, like many other cities and counties, has public hospitals which will provide health care for undocumented people and an education system which will provide education for the children of aliens. So we are clearly incurring costs now in that area. It is difficult to tell what those costs are. We are attempting to estimate what might happen under legalization. We are making estimates based on the number of undocumented persons and on their potential rate of dependence. Even if we based our estimates just on the present rate of dependency of the total population in the city, and based it on the best estimates we can make of how many undocumented people there are now, we are talking about costs for New York in the area of $40 million for providing public assistance, medical care and other services that people may require. These are substantial costs and we cannot be sure that the block grant as it is currently structured would provide adequate reimbursement.

Senator Simpson. I understand that, and we will address that.

Just one final question. I know that you, Dave, have shared your frustration about the inadequacy of the asylum exclusion process.

Do you have any suggestions that might improve that procedure.

Mr. Pingree. I do not think I want to get another branch of government in any trouble. I met 2 days ago with Chesterfield Smith, former president of the American Bar Association. He has been assigned by Judge Spellman in Miami to look into the situation relative to the Haitians who were released from the Krome detention center. He is very, very frustrated and feels that, whereas he hoped that it would take 6 months to handle the cases—that in 18 months when the cash and medical assistance runs out for these people—that we still may not have the cases heard. And one of the problems that he sees is with the pro bono attorneys. No. 1, not everyone is represented; there is difficulty in scheduling the hearings. But, in addition to that, there seems to be a situation with respect to the Immigration and Naturalization Service. They are scheduling hearings for the ones who do not have attorneys as opposed to the ones who do have attorneys; therefore, you are not moving any cases forward.

Judge Spellman also feels—and I do not know if he would want this as a public suggestion—it might be helpful if the Federal Government which now, I believe, is precluded from paying attorneys to represent the Haitians, was able to pay $2,500 per attorney, per completed case, he felt that that would do more to expedite things than anything so far.

Senator SIMPSON. That sounds like an attorney's solution at least. Having practiced law for 20 years.

Mr. PINGREE. I am a nonattorney but I understood.

Senator SIMPSON. I heard that; I appreciate it.

Thank you for your help and we will draw upon your brain power and your skills as we continue this process. Thank you very much.

Let us proceed. May we have order, please?

Our next panel is Dr. Michael Teitelbaum, senior associate, Carnegie Endowment for International Peace; David Carliner, an attorney with the American Bar Association; and David Martin, a professor at the University of Virginia.

It is very much a pleasure to see the three of you. It is a pleasure to welcome the three of you here. I found you all very spirited on either side of the issue and assume you will be just that today. And each of you in your own unique way have added a good deal of dimension to the issue. And as we bring it to the fore again, we will very much appreciate hearing your views or changed views. And so we will proceed, if we may, with Mike Teitelbaum.

STATEMENTS OF PANEL CONSISTING OF DR. MICHAEL TEITELBAUM, SENIOR ASSOCIATE, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE; DAVID CARLINER, ESQ., AMERICAN BAR ASSOCIATION; AND DAVID MARTIN, PROFESSOR, UNIVERSITY OF VIRGINIA

Dr. TEITELBAUM. Thank you very much, Mr. Chairman. It is my pleasure to be here. I have been asked by your rather impressive staff to speak to two issues in my 300 seconds.

The first, is it important that current U. S. immigration——

Senator SIMPSON. May we have, please, the attention for these persons?

Dr. TEITELBAUM. That is actually a relevant term to my testimony—"persons."

The first question: Is it important that current U.S. immigration policy be reformed; and, second, what are the implications of such reforms for U.S. foreign relations? We heard some reference to that this morning.

I want to offer you two broad propositions, and then four friendly modest warnings.

The first proposition is that U.S. immigration policy has served the Nation well in the past, but I believe that reform is now long overdue—by at least a decade—is of great and increasing importance, and will contribute to the national welfare.

The centrality of the issue goes to at least four aspects. First, national sovereignty; second, economic and social well-being of the United States; third, civil rights and civil liberties; and, fourth, the future of American political institutions.

On sovereignty, I can be very brief: control over immigration is universally agreed to be one of the few fundamental elements of national sovereignty.

The question of economic and social well-being is a long and complex subject for which I do not have time here, but my reading of the literature is that, as long as there is not a labor shortage—and I do not believe we have a labor shortage in the United States, large-scale immigration of foreign workers tends to depress conditions for significant sectors of the domestic work force, especially for disadvantaged groups such as minorities, women, and youth. You heard testimony this morning from the NAACP to that effect.

On civil rights and civil liberties, the disproportionate effects of illegal immigration upon these disadvantaged groups may actually be negating the positive effect of controversial civil rights policies such as affirmative action.

Meanwhile, millions of illegal aliens are subject to abuse and exploitation by virtue of their unlawful status, and this certainly does not serve the cause of civil rights.

On the future of American political institutions, fears have been expressed about the political cohesion of the United States. While these fears may prove to be justified, I believe they are probably exaggerated. Current immigration does, however, raise a rather profound problem which has been debated in the Federal courts, but not yet resolved.

Put simply and crudely, do illegal aliens have a constitutional right to congressional representation, and to vote for Senators and Representatives?

Members of Congress, I believe, have a legitimate interest in this question.

For all of the above reasons, I believe it would serve the national interest well to regain control over immigration to the United States, while maintaining a generous policy of legal immigration and refugee admissions. I have carefully reviewed the Immigration Reform and Control Act, and I believe it represents a laudable compromise effort to achieve these goals.

By delegalizing the knowing employment of illegal aliens, it seeks to demagnetize the attraction of the high wage American economy.

By legalizing most illegal aliens who have been continuously residents since 1980, the bill seeks to remove millions of people with at least minimum claims to equity in the United States from a vulnerable position unprotected by the law.

The bill is a compromise and as such everyone, including I would guess our Chairman today, disagrees with some of its provisions. In my opinion, the Bureau's triggering of the legalization before there is assurance of substantial control over illegal entry and visa abuse seems certain to stimulate further illegal immigration in order to claim the legalization benefit. The H-2 provisions seem to me to be excessively open-ended, as there's no indication of how many temporary workers might be recruited. Perhaps the idea of a cap that this committee and the Senate placed on legal immigration, or a more flexible provision such as that of the Refugee Act, ought to be considered as a way of capping those numbers.

There is also a nagging question as to whether the bill's efforts to be sensitive to Mexican concerns have resulted unintentionally in unfair treatment to other major countries of immigration.

Finally, I believe it is fair to ask if the beleaguered INS is adequately funded and staffed to implement an immediate and careful legalization of several million people that will involve substantial document fraud, and then subsequently to enforce employer sanctions effectively. But still I believe this is an impressive example of legislative leadership.

Let me now turn to the second question of foreign policy considerations. Arnold Torres raised it this morning. I have a few comments on it.

The most important long-term issue, I believe, is the creation of jobs in the developing countries that are the major sources of migrants. One has to look at the labor force projections of the major sending countries, which I have included in my written testimony, to be struck by the importance of that factor. This involves U.S. foreign policy in relation to foreign assistance, foreign investment, and trade.

I believe there is a powerful case here for enhanced U.S. support for job-oriented development efforts, but it is only fair to add that development is a slow and highly uncertain process, depends mostly on the policies of the developing countries themselves, and is hardly a substitute for more effective U.S. immigration policies.

In fact, ironically, development in its early stages may actually serve to accelerate outmigration.

I would add, however, that in the past American foreign policies have tended in some cases to stimulate mass migrations and then to try to restrain them once they have started. Examples of stimulation are the Bracero program, the Jackson-Vanik amendment, and the unexpected effects of American intervention in Vietnam; examples of restraints are the Geneva Conference to cause Vietnam to cease its expulsion, and the pressures that have been brought to bear on the Government of Haiti to crack down on its smugglers.

Mass migrations have also been used as tools of foreign policy. The most recent example is that of the Cuban boatlift of 1980. Here the American Government initially welcomed the flow for domestic and foreign policy reasons, only to find that the Castro Government had turned the tables by expelling thousands of criminals, mental patients and others Castro called "scum." These latter groups represented a minority of that flow, but it is a difficult one.

Which leads me finally to the following point, that many countries increasingly are viewing mass outmigration as a kind of national resource to be exploited like any other. They see it as a means to earn hard currencies, to reduce unemployment, to rid themselves of political dissidents and, most malevolently, to get rid of a despised ethnic minority. And this means that such countries can be expected to oppose efforts by receiving countries to regulate the entry of their nationals.

The Mexican response to your bill is an interesting example. In fact, the government of Mexico has traditionally been reluctant to state a preference for the status quo of large-scale undocumented migration. Given this, the Mexican Senate resolution on December

8, which described your bill as a grave matter that negatively affects our good neighbor relations, is of special interest. In fact, my reading of the Immigration and Reform Act shows signs of special sensitivity to Mexican concerns. That is true because Mexico is now the largest source of illegal immigrants to the United States by a large margin, yet its ceilings and its flow in practice would be raised sharply. The bill's legalization plan would result in U.S. citizenship for 1 million or more Mexican illegal aliens. Despite this, it appears that Mexico will oppose passage of this bill.

In my experience, however, there is a diversity of opinion in Mexico on the subject, with a significant minority who favor sensitive reform of U.S. immigration policy. And if you bill would lead to less abuse and exploitation of Mexican nationals in the United States, that could only serve to improve Mexico-U.S. relations.

Let me close with my four friendly warnings. The use of refugee admissions as a tool of U.S. foreign policy, as has been the practice for many years, now appears to be an increasingly dangerous game. Adversaries such as Fidel Castro have proven cynical enough to use mass expulsion to turn the tables on this strategy of American foreign policy. It has also led to distinctions being made between similar groups from different countries.

Second, it would be minimally prudent, in my view, to have contingency plans prepared for the possibility of future mass expulsions of citizens by authoritarian regimes of the right or left. The expulsions by Uganda, Vietnam, and Cuba should be fair warning.

Third, the softening of oil prices which we are watching this week may lead to new mass movements of temporary workers, illegal aliens and others attracted to jobs in oil exporting countries. Already Nigeria has expelled more than a million illegal aliens, and this should serve as fair warning of possible actions by other oil exporters, for example, Venezuela, that would have serious implications for the United States and other nations.

And, finally, it appears that mass extended voluntary departure may be replacing the Attorney General's parole authority, which was deliberately restricted by the Congress in the Refugee Act of 1980. This possibility, I believe, deserves scrutiny by this Committee.

I thank you for your kind attention.

[The prepared statement of Michael Teitelbaum follows:]

PREPARED STATEMENT OF MICHAEL S. TEITELBAUM

Testimony of Michael S. Teitelbaum before the
Senate Subcommittee on Immigration and Refugee Policy
February 25, 1983

Mr. Chairman, Ladies and Gentlemen:

My name is Michael S. Teitelbaum. I am a Senior Associate of the Carnegie Endowment for International Peace in New York. I am appearing before you at your invitation and in my personal capacity, and it is my pleasure to do so.

I have been asked to address two major issues that are of concern to the United States Senate. First, is it important that current U.S. immigration policy be reformed, and second, what are the connections of such reforms with U.S. foreign policy, with particular reference to Mexico?

In my remarks today, I shall offer for your consideration two broad propositions, and will close with four more modest warnings. My first proposition is that U.S. immigration and refugee policy has served the nation well until the 1970s, but that reform is long overdue (by at least a decade), is of great and increasing importance, and will contribute to the domestic welfare of the United States as a whole.

The second is that while immigration and refugee policies continue to be primarily domestic issues, they are increasingly linked to foreign policy concerns. In this regard, proposed reforms of American immigration policy can be expected to serve in the medium-to-long-run to improve U.S. foreign relations, although in the short term some foreign criticism should be expected from countries such as Mexico.

I. U.S. Immigration Reform is Important and Long Overdue:

There is almost universal agreement that U.S. immigration policy has served the nation well in the past, but now is in a state of disarray. Even those who have been most vocal in their opposition to the Immigration Reform and Control Act of 1982 have agreed that there is need for restraining large-scale illegal or undocumented immigration to the United States. Their opposition, as I understand their public pronouncements, is directed against the methods chosen, rather than with the need to do so.

The empirical situation of illegal or undocumented immigration to the United States is well known to members of this committee: the best conservative judgment is that 3.5-6.0 million illegal aliens were resident as of about five years ago, with annual additions ranging from several to many hundreds of thousands. Greater quantitative precision on a subject like this is not attainable, since participants in clandestine migration have an understandable interest in not being counted. But beyond any reasonable doubt there is a large and growing pool, numbering in the millions, of illegal immigrants currently resident in the United States.

With regard to trends, the INS data on apprehensions are imperfect, in that they represent "events" of apprehension rather than people (one person may be apprehended more than once), indicate only those apprehended and not those who escape apprehension, and do not subtract out those who return home after successfully violating immigration laws. However, apprehensions have nearly tripled from 345,000 in 1970 to almost 1 million in 1982, with no significant increase in enforcement effort. This does provide rather convincing evidence of a sharp upward trend in violation of U.S. immigration laws.

While there can be no firm numbers on annual net additions, any reasonable observer would have to agree to a range of estimates from several hundred thousand to many hundred thousand. To put such a range into context, this means that net illegal immigrants are likely to be as numerous as net legal immigrants (excluding refugees), whose numbers probably are in the range of 300-500,000.[1]

A fair assessment, then, would be that truly reliable data on illegal immigration are not available, and are not likely to become so. This being true, immigration is a public policy issue analogous to tax evasion, the underground economy or the intentions of the Soviet Union -- issues for which policies must be formulated in the absence of reliable data.

Recognition of the scale and implications of such immigration is by no means new. Over a decade ago in 1972, a Presidential commission chaired by the late John D. Rockefeller 3rd described illegal immigrants, which it estimated to number between 1 and 2 million at that time, as a "major and growing problem". It recommended that:

> the flow of immigrants should be closely regulated until this country can provide adequate social and economic opportunities for all its present members, particularly those traditionally discriminated against because of race, ethnicity, or sex.... The Commission recommends that Congress immediately consider the serious situation of illegal immigration and pass legislation which will impose civil and criminal sanctions on employers of illegal border-crossers or aliens in an immigration status in which employment is not authorized. To implement this policy, the Commission recommends provision of increased and strengthened resources consistent with an effective enforcement program in appropriate agencies.[2]

Similar foresight was shown in the Congress, when under the leadership of Congressman Peter Rodino the House of Representatives twice passed immigration reforms along these lines during the 92nd Congress (H.R. 16188) and 93rd Congress (H.R. 982). Senate action on both these bills was blocked by Judiciary Chairman Eastland. Since then there have been:

o three high-level interagency task forces in the Executive Branch, in the Ford, Carter and Reagan Administrations, all of which reached broadly similar conclusions on the need for reform;

o a blue-ribbon Select Commission involving four cabinet members, eight senior Members of Congress including the Chairman of this subcommittee, and four prominent members from the private sector, which again urged reform;

o a year and a half of extensive hearings in both the Senate and the House, resulting in the Immigration Reform and Control Act of 1982;

o a week of debate on the floor of the Senate, distinguished by its high tone and the wide range of perspectives and concerns expressed, which culminated in a bipartisan and overwhelming (80-19) vote in favor of immigration reform;

o eight hours of debate in the House during the 1982 lame duck session, distinguished principally by the lateness of the hours accorded the subject and by the frankly dilatory tactics of reform opponents.

Few would argue seriously that the subject of U.S. immigration reform has been given insufficient scrutiny by government. This high level of attention is well-placed, for immigration policy is of central importance to a broad range of domestic and international concerns. These include:

- national sovereignty;
- economic and social well-being of the American people in general and of its disadvantaged groups in particular;
- civil rights and civil liberties;
- the future of American political institutions, including the United States Constitution and the U.S. Congress.

National sovereignty: The first of these, national sovereignty, may be disposed of quickly. The right to control immigration across its borders is universally considered one of the few fundamental characteristics of a sovereign state, along with the rights to tax its residents and to defend itself. For if nationals of one sovereign nation had a right to enter another without regulation, sovereignty would have little effective meaning. Lest you dismiss this as fanciful, consider that as recently as 1982, the government of Argentina reportedly was insisting upon the right of free immigration from Argentina (population: 29,000,000) into the thinly-populated Falkland Islands (population: 1,600) as a condition of removing occupying Argentinian troops. Indeed, it is said that this demand proved to be one of the main stumbling blocks in the failed negotiations that preceded the undeclared war over the Falklands.[3]

The general point, then, is that a nation that fails to establish reasonable controls over immigration is in effect abrogating a significant element of its sovereignty. If illegal immigration to the U. S. is as large as is legal immigration, as discussed above, a legitimate question surely may be raised about American sovereignty.

Economic and social wellbeing: The debate about the impact of illegal or undocumented immigration upon the economic and social wellbeing of the American people is a more complex one, afflicted by considerable uncertainty, yet rife with overstatement by advocates. We are uncertain becasue we lack good quantitative data on undocumented immigration, and also because we have only a limited understanding of how complex societies and economies actually work.

Nonetheless there is fairly broad agreement that large-scale immigration of foreign workers tends to depress conditions for significant sectors of the domestic work force unless the economy is at full employment, which it obviously has not been for much of the 1970s when immigration flows accelerated most dramatically. These negative effects are likely to be unevenly distributed, with lower-skill groups and disadvantaged minorities feeling the effects most heavily. At the same time, a minority of employers and some consumers would be expected to benefit from the availability of a willing labor supply at low wages.

Obviously this means that there are special economic interests involved. Indeed certain limited subsectors -- fruit and vegetable agriculture and pick-and-shovel construction in the Southwest, the garment industry in Los Angeles and New York, and restaurants and hotels in several regions -- have become dependent upon a labor "subsidy" provided by illegal immigration, and like any subsidized industry can be expected to fight fiercely to protect their subsidy. Such special interests have a number of alternatives, ranging from continuation of the status quo of large-scale illegal immigration to alternative business and investment strategies over the medium-to-long-term.

From the less parochial perspective of the U.S. economy as a whole, most economic theory would expect large-scale influxes of low-skill labor to have important effects upon investment in automation and upon the growth of productivity. Japan has demonstrated that it is possible to achieve high economic growth and impressive productivity increases with very low levels of immigration.

There have been predictions of future labor shortages in the United States by the end of this century, but scrutiny of such predictions suggests that our knowledge of long-range economic trends is insufficient to draw any such conclusions. All available labor force projections suggest continued substantial growth into the 21st Century, and yet these may prove to err on the low side, due to higher-than-projected immigration and female labor force participation, and probable increases in retirement age. On the labor demand side, reliable predictions beyond the next five years or so are not possible, given the dynamism of the U.S. economy and the unpredictability of its future growth path. Thus both demand and supply of labor cannot be predicted far into the future, and it is therefore impossible to make any solid predictions about the tightness or looseness of labor markets beyond the next several years, which most analysts expect to be years of continued labor surplus.

The controversies about the effects of undocumented immigraton on education and public services have involved much overstatement by advocates on both sides. The effects may be significant in some sectors or regions, and at the same time quite insignificant in others. Available data are inadequate on the use of such services by illegal aliens, due to the widespread use of fraudulent documents and to the lack of serious validity checks of applicants' documentation.

In all discussions of the effects of illegal immigration, it must be remembered that flows are heavily concentrated in a few regions of the country, and hence the effects are to be felt most profoundly in a minority of states and countries. Such concentration explains the high levels of public debate in some regions and the more limited interest in other regions and in parts of the national government.

Civil rights and civil liberties: Immigration policy is also of significance to civil rights and civil liberties. On the one hand, it seems reasonably clear that those Americans experiencing the most negative economic impact from uncontrolled immigration are those same minorities --- blacks, Hispanics, Chinese, women, and especially minority youth ---

who have been beneficiaries of "affirmative action" measures aimed at improving their disadvantaged circumstances. Hence the failure to reform immigration policy may be negating many of the positive effects of such controversial civil rights policies. Meanwhile, millions of illegal aliens are subject to exploitation and abuse due to their unlawful status --- hardly consistent with the promotion of civil rights. While some politically-active Hispanics oppose efforts to regulate immigration, partly for political reasons and partly out of fears of discriminatory effects, leaders of black groups are by and large supportive of immigration reform.

On the civil liberties front, bona fide guardians of civil liberties have expressed concern over the feared negative consequences of proposed measures to regulate immigration effectively. At the same time they have joined in court challenges to laws that restrict the access of illegal aliens to public services.

As a longtime supporter of both civil rights and civil liberties concerns, I find the fears of these groups to be legitimate, but exaggerated. On this I am honored to associate myself with the conclusions of Father Theodore Hesburgh, who for many years served as Chairman of the U.S. Civil Rights Commission, and whose standing as a leader in the fight for civil rights and civil liberties is unimpeachable.

Future of American political institutions: Lastly, it seems clear to me that large-scale illegal immigration poses serious challenges for the political future of the United States and of its institutions, including the Constitution and the Congress. Some have voiced serious concerns about the impacts of current and prospective immigration trends upon the political cohesiveness of the United States, given the heavy demographic effects of immigration (it accounts for 30-50 percent of U.S. population growth at present) and the dominance of Spanish-speaking immigrants when legal and illegal flows are combined. Comparisons have sometimes been made to the persistent linguistic divisions of Canada and Belgium, and some have even gone so far as to predict political separatist movements in the Southwest. More moderate expressions of concern have been made by several prominent Americans who, while they do not anticipate separatist tendencies, believe that maintaining national cohesion requires careful handling of immigration policy and promotion of measures to assure integration of immigrants and refugees.

Perhaps more important than such abstract concerns and fears is the fascinating legal battle as to whether illegal aliens are entitled by the U.S. Constitution to political representation in the Congress, despite the illegality of their presence in the country. The matter goes right back to the Great Compromise of 1787, in which the framers of the Constitution adopted compromise language that granted representation to "persons," rather than to "citizens," "adults", "landowners," "voters," or other possible categories. (Slaves were not counted as "persons," but instead were given a three-fifths weight in allocations, as a compromise with delegates from the slave states, and "Indians not taxed" were excluded). Congressional apportionment was to be modified every ten years based on the decennial Census count of "persons." It is this Census provision that led in 1980 to a Federal court case that almost surely was never contemplated by the Founding Fathers.

The Bureau of the Census, reportedly under heavy pressure from ethnic activists and the Carter White House, decided to make intensive efforts to enumerate as many illegal aliens as possible in the 1980 Census. Since their numbers were apparently large and concentrated in a few states, this led to a legal challenge arguing that such inclusion of illegal aliens in apportionment counts would unfairly deprive citizens and legal resident aliens of other states of their fair Congressional representation.

The Carter Administration defended its Census activities by arguing that the Constitution grants representation to "persons," and that illegal aliens were therefore entitled to full representation in the Congress. (It failed to note that many "persons" present on Census day have been routinely excluded from apportionment counts, e.g. millions of visitors and others in a temporary status, diplomats, etc.) The Justice Department went so far as to state that "nothing in the Constitution forbids a state from permitting even illegal aliens from voting for Representatives." To date the federal courts have not ruled on the merits, finding that the plaintiffs lack standing to sue. But members of Congress surely have an interest in whether an individual who is unlawfully resident should have a Constitutional right to be represented by, and to vote for, Congressmen and Senators.

More generally, the demographic fact that current immigration levels comprise a very substantial part of population growth and that if present trends continue will come to dominate population change is clearly perceived by ethnic politicians and activists. For example, there have been quite open predictions that Hispanics will soon outnumber blacks as the largest minority group in the United States, or that Hispanics, blacks and Asians will comprise a majority of California's population in only a few years. Both of these predictions are plausible only if large-scale illegal immigration were to continue, which illustrates how politically divisive such an issue could become.

II. Comments on the Immigration Reform and Control Act:

For all of the above reasons, I believe it would serve the national interest well to regain control over immigration to the United States, while maintaining a generous policy of legal immigration and refugee admissions. I have reviewed carefully the Immigration Reform and Control Act, and believe that it represents a laudable compromise effort to achieve these goals.

First, by de-legalizing the knowing employment of illegal aliens, it seeks to de-magnetize the attraction of the high-wage American economy. In so doing, it recognizes the need for a more reliable worker identifier than the readily-forged Social Security card of today, but allows the President the authority to develop such improved identifiers over three years. At the same time, the bill is highly sensitive to civil rights and civil liberties concerns.

Second, by legalizing most illegal aliens who have been continuously resident since 1980, the bill seeks to remove millions of people with at least minimal claims to "equities" in the United States from a vulnerable position unprotected by the law.

The bill is a compromise, and as such everyone (including, I would guess, its sponsors) is likely to disagree with some of its provisions. In my opinion, the bill's "triggering" of the legalization before there is assurance of substantial control over illegal entry and visa abuse seems certain to stimulate further illegal immigration in order to claim the legalization benefits.

The H-2 provisions seem excessively open-ended to me, since nowhere is it indicated how many temporary workers might be imported; this could be improved by imposing some form of numerical "cap", along the lines of the Senate bill's provisions on permanent legal immigration or the Refugee Act's requirement of Congressional consultations on numbers.

There is also a nagging question in my mind as to whether the bill's efforts to be sensitive to Mexican concerns has resulted unintentionally in unfair treatment to other major countries of immigration (see below).

Finally, I believe it is fair to ask if the beleaguered INS is adequately funded and staffed to implement a careful, immediate legalization of several million people that will involve substantial document fraud, and then subsequently to enforce employer sanctions effectively. As the recent Government Accounting Office report indicated, employer sanctions must be seriously enforced if they are to be effective. In the past I have been criticial of the INS, and so I am pleased to be able to say that from the outside it looks to be improving noticeably --- but as members of this committee know better than anyone else, it has a long way to go. This is an additional, more practical reason for tying the bill's proposed legalization to improvements in immigration law enforcement, and emphasizes the need for continuous oversight by this committee of INS budgets and performance.

Notwithstanding these concerns, I believe the Immigration Reform and Control Act represents an impressive example of balanced and humane legislative leadership. Rarely, if ever, has proposed legislation on a controversial topic received almost universal acclaim from the nation's opinion leaders of all political persuasions, from past Presidents and cabinet officers from both parties, and from over 80 percent of the United States Senate. The Congress can be justifiably proud of the leadership it has exercised in this difficult matter.

III. Foreign Policy Considerations of U.S. Immigration Reform:

It is self-evident that immigration and refugee policies intersect substantially with foreign policies. This is inevitable, since such policies deal with the movements of citizens of other countries to the United States. The same is true of U.S. economic and energy policies, which affect international trade and energy prices, and hence the economies of other countries. But immigration policies are if anything more emotional than economic and trade policies, since they involve movement by human beings instead of raw materials or manufactures.

In fact, the links between foreign policies and immigration policies are numerous and complex. They involve U.S. policies affecting the economic development (and especially the creation of jobs) in the developing world, and hence are affected by policies on foreign aid, foreign trade and foreign investment. Such links have been explicitly mentioned by both Secretaries Haig and Schultz in support of the President's Caribbean Basin Initiative.[4]

Ironically, similar arguments have been employed by opponents of U.S. immigration reform, arguing that only economic development in sending countries will be effective in reducing illegal immigration to the United States. I have been concerned with international development issues for much of my professional life, and continue to believe that a strong American commitment to international assistance, trade and investment is essential. Nonetheless, it is only fair to note that economic development is a slow and highly uncertain process, and depends most fundamentally upon the policies followed in developing countries themselves.

Meanwhile, available labor force projections for developing countries indicate that truly massive increases are nearly certain for the coming decades --- the delayed consequences of the "baby booms" in these countries in the 1960s and 1970s. The International Labour Organization projects labor force growth of about 600-700 million in the developing world from 1980 to 2000 (see attached table). To put this into proper perspective, this 20-year projected increase is itself larger than the entire labor force of the whole of the industrialized world today. As the table shows, the projections for "Middle America" (Mexico and Central America) show labor force increases of nearly 100 percent, and for the Caribbean over 50 percent. Even highly successful development initiatives will be hardpressed to provide jobs for such burgeoning labor forces.

Such evidence provides a powerful case for enhanced American support of job-oriented development efforts. But these can hardly serve as substitutes for more effective U.S. immigration policies. Indeed, most analyses suggest that one of the consequences of the initial stages of rapid economic development is the acceleration of migratory movements from rural areas to cities and across international borders.

Foreign policy matters have also been directly related to international migrations in a number of ways. First, foreign policy initiatives have stimulated such movements, as in the negotiations leading up to the "bracero" temporary worker program initiated in World War II, the Jackson-Vanik amendment aimed at facilitating outmigration from the Soviet Union, and as an unanticipated consequence of U.S. intervention in Vietnam. Foreign policy has also been used to restrain immigrations, as in the 1979 Geneva Conference convened to pressure the government of Vietnam to cease the mass expulsion of its nationals, and the pressures brought to bear upon the government of Haiti to crack down on Haitian smugglers transporting thousands to South Florida.

Mass migrations have also been employed as a tool of foreign policy, most recently by Cuban Premier Fidel Castro in the coercive expulsion to the United States of Cubans he termed "scum" (escoria), which appears to have been intended in part to embarrass the Carter Administration. There may have been similar foreign policy intent in the expulsions from Vietnam, or at least claims to this effect have been made by China, Thailand and other ASEAN nations.

American foreign policy has also employed mass migrations as tools, through its longstanding welcoming of outflows from Communist nations as evidence of the "bankruptcy" of the Communist system. In recent years, such uses have appeared to backfire badly; initial outflows from Cuba and Vietnam were welcomed by the United States, only to find that the governments of both countries were actively encouraging the mass migrations, and that they were causing serious problems both internationally and domestically. Both movements can hardly be said to have furthered American foreign policy interests, and the Cuban boatlift in particular did serious damage to U.S. public support for a generous refugee policy.

Finally, it is worth noting that there has been a major shift in the attitudes of governments and ruling elites in many countries of outmigration, who are increasingly viewing mass outflows as a "national resource" to be managed like any other. The underlying reasons for such policies may be economic, political, or social.

In purely economic terms, remittances sent home by those working abroad may comprise a very important component of total foreign currency inflows in some countries, e.g. Egypt, India, Turkey and Mexico. Such remittances may exceed foreign currency earnings from raw material exports or tourism, for example, and may make the difference between surplus or deficit in the balance of payments.

Second, encouragement of out-migration may be used as an instrument of governmental policy to improve or stabilize domestic economic or political conditions. This is the so-called "safety valve" argument.

Third, emigration permits can be allocated by governments as "scarce goods", to dispose of political dissidents or to capture the assets of the departing migrants, as in some Eastern European countries, Vietnam, Haiti, Uganda, and Cuba.

Fourth, emigration is also seen by the government of some source countries as a means of solidifying political relations with the countries to which the migrants move, or as a means of establishing effective control or outright sovereignty over land areas outside their borders.

Finally, and most malevolently, there is the tradition of governments coercing the departure of a despised ethnic or religious minority, or of a "politically undesirable" social group or class.

One implication is that countries favoring outmigration can be expected to oppose efforts by the countries of destination to regulate the entry of their nationals. Since a government must be circumspect in asserting that its nationals have a right to migrate to another sovereign state, lest it deny its own sovereign right to control entry across its borders, such assertions may be couched obliquely in terms of "historical patterns" or an argued universal right to seek employment.

This discussion leads us quite naturally to the question of whether proposed U.S. immigration reforms are fair to Mexico and whether, fair or unfair, they will be opposed by that country. In fact, the government of Mexico has traditionally been reluctant to state a public preference for the status quo of large-scale undocumented migration by Mexican nationals to the United States. Such a statement would raise problems for strongly-held views of Mexican sovereignty and independence from the "Colossus of the North," and would also be acutely embarrassing in domestic Mexican terms.

Given this, a recent resolution of the Mexican Senate is of particular interest. Most Mexican observers had believed that the Immigration Control and Reform Act of 1982 had no chance of passage, as they expected it to be blocked by an unlikely coalition of employers of undocumented aliens, Chicano activist groups, and civil libertarians. But when the bill passed the U.S. Senate by an overwhelming margin (80-19), and was brought to the House floor in the lame duck session of 1982, the Mexican Senate (reportedly at the initiative of the Mexican Labor Federation) adopted a formal resolution on "this grave matter that negatively affects our good neighbor relations" and expressed its "alarm and concern for the repercussions which will impact both countries if the Simpson-Mazzoli legislation is passed." The Senate resolution described undocumented Mexican migration as a

> transcendent matter [that] should not be considered from a unilateral perspective, but rather should be treated from a bilateral and even multilateral perspective[5]

and referred it to the Mexico/U.S. inter-parliamentary conference and to three multilateral institutions. This Mexican Senate resolution represents the most forthright formal assertion so far by a competent governmental organ that immigration regulation can no longer be considered a matter for unilateral action. This view is not limited to Mexico, though representations by other countries usually are made quietly through diplomatic channels rather than via formal public resolutions.

In fact, perusal of the Immigration Reform and Control Act of 1982 indicates that serious efforts were made to limit any negative impacts of immigration reforms upon Mexico. It must first be recognized that Mexico is by far the largest source country of legal immigrants to the United States, averaging 68,500 per year from 1972 to 1978 despite the 20,000 per country limit on "numerically-limited" immigration. This is true principally because of the large number of immediate family members of U.S. citizens admitted from Mexico without any numerical limitation. As a result, Mexico, with 1.6 percent of the world's population, provides over 15 percent of all legal immigrants and perhaps 50-60 percent of illegal immigrants to the United States.

The Immigration Reform and Control Act seeks to restrain illegal immigration, but also provides for a large increase in the number of legal immigrants from one country only --- Mexico. Moreover, its legalization provisions could result in eventual U.S. citizenship for a million or more Mexican undocumented aliens, who could then bring in their immediate family members with no numerical limits, and could petition for the admission of more remote relatives. Other major countries of outmigration to the United States (e.g. Philippines, South Korea, India) could complain that they have received unfair treatment when compared to that accorded Mexico in the Immigration Reform and Control Act.

Mexico surely has legitimate concerns about U.S. immigration policy, especially with regard to the abuse and exploitation experienced by Mexican undocumented aliens who have few legal rights given their unlawful status. Mexicans also point out quite reasonably that current Mexican migration streams are longstanding and were stimulated in part by U.S.-initiated labor recruitment efforts, including the "bracero" program. They also emphasize that American law attracts such migration by allowing employers to knowingly recruit and hire undocumented workers at far higher wages than they can hope for in Mexico.

The outspoken resolution of the Mexican Senate makes it appear that Mexico will oppose any effective efforts by the United States to regulate immigration, no matter how fair they may be to Mexico, out of a judgment that the status quo best serves Mexican interests. This does appear to be the majority view among Mexican officialdom, but my own discussions in Mexico City suggest that a substantial minority would welcome sensitive American immigration reforms such as those embodied in the Immigration Reform and Control Act. They see undocumented migration as a short-term expedient that is not in the long-term interests of Mexico, in that it leads to a loss of skilled manpower essential to development (the so-called "brain drain"). In this minority view, Mexico would be best served by adapting to its economic and labor-force realities instead of temporarily exporting its problems to the north. They join, however, with supporters of the status quo in decrying the abuse and exploitation experienced by undocumented Mexicans in the U.S.

Passage of the Immigration Reform and Control Act can therefore be expected to generate criticism in Mexico, but also a modicum of support. Given the long phase-in period, employer sanctions would have little effect during 1983 and 1984, when Mexico will need assistance to contend with the economic consequences of its current liquidity crisis. And if the bill reduced the abuses experienced by Mexican nationals in the U.S., it would in the longer term serve to improve relations between the two neighboring countries.

IV. Four Modest Warnings:

It is clear that international migration pressures are growing and are becoming of central significance for both domestic and foreign policies of the United States. Given this, recent experiences prompt me to offer four modest warnings. These are that:

- The use of refugee admissions as a tool of U.S. foreign policy, as has been the practice for many years, now appears to be an increasingly dangerous game. Adversaries such as Fidel Castro have proven cynical enough to use mass expulsion to turn the tables on this strategy of American foreign policy. The policy has also led to divisive inconsistencies in responding to refugee or asylum claims from different countries, and has strained the willingness of the American public to assist refugees in need.

- It would be minimally prudent to have contingency plans for the possibility of future mass expulsions of citizens by authoritarian regimes of the right or left. The expulsions by Uganda, Vietnam, and Cuba should be fair warning.

- The softening of oil prices may lead to new mass movements of temporary workers, illegal aliens and others attracted to jobs in oil-exporting countries. Already Nigeria has expelled more than a million illegal aliens, and this should serve as fair warning of possible actions by other oil exporters (e.g. Venezuela) that would have serious implications for the United States and other nations.

- It appears that mass "extended voluntary departure" may be replacing the Attorney-General's "parole" authority,[6] which was deliberately restricted by the Congress in the Refugee Act of 1980. This possibility deserves scrutiny by the Congress.

I thank you for your kind attention.

FOOTNOTES

[1] The main uncertainty about the number of net legal immigrants is about the number of out-migrants annually.

[2] Commission on Population Growth and the American Future, Population and the American Future (Washington: 1972), p. 116.

[3] The Times (London), July 22, 1982.

[4] Speech by Secretary of State Haig to National Governor's Association, February 22, 1982; Statement by Secretary of State Schultz before the Senate Committee on Finance, August 2, 1982, in Department of State, Current Policy, 412, p. 1.

[5] U.S. Congress, Congressional Record, December 17, 1982, p. H10256.

[6] Personal communication, Charles Keely, February 1983.

Table 1: Projected Labor Force Increases, 1980-2000

	Estimated Labor Force (in thousands)		Projected Labor Force (in thousands) 2000		Projected Increase (in millions) 1980-2000		Projected Percentage Increase 1980-2000	
	1960	1980	Low	High	Low	High	Low	High
World	1,297,400	1,794,445	2,472,159	2,597,211	677.7	802.8	37.7	44.7
(More developed)	441,799	549,712	629,875	651,763	80.1	102.0	14.5	18.5
(Less developed)	855,601	1,244,733	1,842,283	1,945,448	597.6	700.7	48.0	56.2
[Less developed minus China]	539,008	822,829	1,208,492	1,271,317	494.4	534.4	60.1	65.0
Africa	111,165	170,450	276,873	289,193	106.4	118.7	62.4	69.6
(Eastern)	34,634	54,113	87,667	92,246	33.6	38.1	62.0	70.4
(Middle)	14,393	20,621	31,183	32,282	10.6	11.7	51.2	56.5
(Northern)	19,141	30,538	52,744	54,746	22.2	24.2	72.7	79.2
(Southern)	6,831	12,040	20,610	21,447	8.6	9.4	71.1	78.1
(Western)	36,165	53,138	84,699	88,472	31.6	35.3	59.3	66.4
Latin America	70,771	117,065	202,786	211,712	85.7	94.6	73.2	80.8
(Caribbean)	7,415	10,206	15,637	16,743	5.4	6.5	53.2	64.0
(Middle America)	14,883	27,173	52,314	54,352	25.1	27.2	92.5	100.0
(Temperate South America)	11,690	15,316	19,847	20,119	4.5	4.8	29.5	31.3
(Tropical South America)	36,783	64,369	114,989	120,498	50.6	56.1	78.5	87.1
Northern America	79,906	112,645	136,496	146,800	23.9	34.2	21.1	30.3
Asia	728,350	1,030,743	1,449,574	1,532,534	418.8	501.8	40.6	48.6
East Asia	375,677	507,787	633,791	674,131	126.0	166.3	24.8	32.7
(China)	316,593	421,904	524,943	562,175	103.0	140.3	24.4	33.2
(Japan)	44,441	60,432	70,536	71,480	10.1	11.0	16.7	18.2
(Other)	14,642	25,451	38,312	40,476	12.9	15.0	50.5	59.0
South Asia	352,673	522,957	815,783	858,402	292.8	335.4	56.0	64.1
(Eastern)	93,118	140,691	223,685	235,052	83.0	94.4	58.9	67.0
(Middle)	236,931	348,430	535,578	565,243	187.1	216.8	53.7	62.2
(Western)	22,624	33,835	56,520	58,108	22.7	24.3	67.0	71.7
Europe	190,754	218,259	242,049	249,596	23.8	31.3	10.8	14.3
Eastern	48,796	58,221	64,323	66,157	6.1	7.9	10.4	13.6
Northern	34,296	38,141	42,749	44,600	4.6	6.5	12.0	16.9
Southern	48,101	52,934	59,192	60,754	6.3	7.8	11.8	14.7
Western	59,562	68,963	75,785	78,085	6.8	9.1	9.8	13.2
Oceania	6,454	9,998	13,717	14,561	3.7	4.6	37.1	45.6
(Australia and New Zealand)	5,007	7,765	10,284	10,953	2.5	3.2	32.4	41.0
(Melanesia)	1,172	1,711	2,573	2,702	.9	1.0	50.3	57.9
(Micronesia)	275	512	860	907	.3	.4	67.9	77.1
USSR	109,999	135,296	150,663	152,815	15.4	17.5	11.3	12.9

Source: Calculated from International Labour Organization, Labour Force Estimates and Projections, 1950-2000, Second Edition (Geneva: ILO, 1977), Volume 5, Tables 1, 4, 6.

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Source: Calculated from International Labour Organization, Labour Force Estimates and Projections, 1950-2000, Second Edition (Geneva: ILO, 1977), Volume 5, Tables 1, 4, 6.

Senator SIMPSON. Thank you very much.

You do things where you stay timely, and that is why your observations are very valid, indeed.

Now, please, Mr. Carliner.

STATEMENT OF DAVID CARLINER

Mr. CARLINER. Mr. Chairman, it is a special pleasure to——

Senator SIMPSON. I will give you extra time, too; I want you to know that, Dave, because I am going to give you a little extra time.

Mr. CARLINER. Well, thank you very much.

As I was saying, it is a special pleasure to be before you, Mr. Chairman. I have been before you a number of times and, although we disagree on various matters, you always disagreed agreeably, and although you have certainly more power, it is a pleasure to work with you in trying to resolve, from our point of view, a national immigration policy for the United States.

Senator SIMPSON. Do you want to pull that microphone just a bit more closer?

Thank you very much.

Mr. CARLINER. I am here on behalf of the American Bar Association, which has considered the legislation which you have been considering yourself for a number of years. I feel somewhat like the cows which you have in Wyoming, which digest everything twice.

Much of what I will say you have heard many times before, and I will try to be very succinct regarding the issues. With regard to employer sanctions, the American Bar Association has changed its mind. In 1976 it adopted a resolution favoring employer sanctions.

Three weeks ago, at a meeting in New Orleans, it reversed its position, and now opposes that proposal. I know, Mr. Chairman, that you have heard all the arguments against employer sanctions, and I will not belabor you with them once again.

Our position very simply is that they will not work. The report recently of the General Accounting Office regarding the experience of some 19 other countries which have adopted such sanctions, we believe, reveals useful experience which the United States should look to before it brings about such a fundamental change in American law dealing with the ability of people to work, and with the duties to be imposed upon employers.

I heard you say earlier that it is a fact of life politically that one cannot get legalization through the Congress of the United States unless one has sanctions. I, as an individual, and the American Bar Association, as an institution, necessarily defer to your judgment in the matter, and accept your wisdom.

All that we can say is that it is a false nostrum that encourages the American people to believe that to impose penalties upon employers who give jobs to aliens who come to the United States illegally is going to deter a large number of the employers who now give the jobs to illegal aliens. It will not beef up the prosecution of people who engage in illegal conduct. We have evidence to bear witness on that.

The fact is that numerous aliens come to the United States every day illegally by crossing the border without inspection. The prosecution of those aliens has not been notably successful. It will certainly not deter, as I am sure you have heard many times, an underemployed or unemployed person who is living in semi-starvation in another country. It will not deter him from coming to this country to get a job if he knows that some possible employer in Los Angeles, or Chicago, or Washington, D.C., might go to jail because he has been given a job.

However, if it is a price that the majority of the Senate and the House of Representatives must pay in order to legalize what has been described as the underclass of people in the United States who are illegally in this country, then that is a political judgment that the Congress of the United States must make.

With regard to legalization, the American Bar Association favors it. We as lawyers, we as responsible people in the United States, do not think that it is tenable; it is not conscionable to have a host of people in this country, of whatever number, 3 million, or 12 million, live in this country under a cloud of illegality, subject to exploitation, and subject to the denial of rights which they should have by reason first, of being here, and by reason also, as many of them are being taxpayers to the United States.

We support legalization in principle. We believe that it should be as liberal as possible, in order to legalize the status of all of those people who are illegally here. There is no great benefit served, we believe, in backdating the priority date for acquiring lawful, permanent status to the United States by having an earlier rather than a later date.

If someone is here, and is not going to be uprooted, or discovered, or removed easily, or removed except with great cost, social and financial, the clean thing to do is to legalize the status at an appropriate date so that the person can be assimilated to the status of a person who is legally in the United States.

We have a number of other concerns, Mr. Chairman, which are of a narrower significance in terms of social policy, but which are important in the administration of the law. One of these concerns the legal procedures of the Immigration and Naturalization Service in dealing with those who appear before it.

There are about 12 or 13 policies which are enumerated in the American Bar Association resolution. Two of the most important have to do with judicial and administrative procedures.

With regard to administrative procedures, persons who come to the United States, as you know, must go through an inspection procedure before an immigration officer at a port of entry, whether an airport or a border crossing point on either of our borders. If that officer believes that a person is admissible to the United States, he is admitted. If the immigration officer believes he is not admissible to the United States, until now, and until the proposed legislation becomes effective, with three exceptions, anyone who is claiming admission to the United States is entitled to a hearing before an immigration judge.

Under the terms of the proposed legislation, this would be eliminated for persons who do not have documents, and who are believed by an immigration inspector to have no colorable basis for coming to the United States.

We do not think that whatever abuse there may be in this procedures it is such that legislation should deny people the rights that they have had since 1903. In 1980, there were some 3,700 exclusion hearings. There were 46,000 deportation hearings. Approximately 1 million people came to our borders and were required to leave under what is called an order of required departure, without any formal proceedings.

Many of the people who come have no documents, because they believe they are citizens of the United States, sometimes having been born in this country, and being citizens by birth, and having been taken back to another country, and perhaps having dual nationality. They have no documents. They could be excluded under the terms of this legislation without a hearing.

Some people come having lost their prior identification cards, the Alien Registration Receipt Card, for example, and they have a very hard time getting a new card from the Immigration and Naturalization Service.

We believe that the possibility of error and, the possibility of abuse of authority, are such that it would be better if this proposal to eliminate hearings for persons who seek to come to the United States were not included in the legislation.

In other words, to continue the pattern, the practice, and the law which has been in effect since 1903.

There is another provision which has been one of great controversy among lawyers and others, having to do with the scope of judicial review in dealing with asylum cases specifically. This has been a historic argument between the United States Government and various litigants, in immigration matters. The Immigration and Naturalization Service has historically wanted to limit the review of any decision by an Immigration official, to either legal questions, errors of law, that is, or what is called the arbitrary exercise of discretion, and precluding a court from examining factual issues.

For all other administrative decisions rendered by the United States Governmental agencies, as the Chairman, of course is aware, the courts do have the opportunity to review factual determinations.

For whatever reason, the administration has proposed, and your legislation has accepted the proposal, that the scope of review in asylum cases not include a review of factual determinations.

The fact that the handling of asylum cases has been wanting by the Immigration Service is indicated by the provisions in your own legislation, which would deny to the special inquiry officers, the immigration judges, who have, until now, heard asylum cases, the right to hear them in the future, by setting up a special category of immigration judge to hear these cases.

The fact is that the handling of these cases has been very political; it has been very discriminatory. Even to this day—when I say to this day, I mean to February 25, 1983, despite the ongoing controversy regarding this issue, an asylum case is handled in a very casual way, in my opinion, by the administrative agencies.

If I may be specific, the person who applies for asylum has a hearing before an immigration judge, or before a travel control officer of the Immigration and Naturalization Service, his application is sent over to the State Department for advisory opinion by the Bureau of Human Rights and Humanitarian Affairs. That office gives an advisory opinion, which is generally a one-page letter, which contains boilerplate, which does not set forth, for the most part, any factual determinations. That advisory opinion is sent back to the Immigration and Naturalization Service. In 99 percent of the cases the Immigration Service acts upon the application for asylum solely upon the basis of the advisory opinion forwarded by the State Department.

No lawyer in any other proceeding, before the National Labor Relations Board, the Federal Communications Commission, or any other administrative agency, would accept this type of adjudication.

If the legislation were adopted, barring the courts from reviewing factual determinations, there would be no way that a person could challenge a determination made by the Immigration and Naturalization Service that a person was not eligible for asylum.

Asylum, as the chairman is quite aware, is very often a matter of life and death if it is a valid claim. We think that Congress should move very cautiously before it eliminates the procedures which are now in effect.

We have a number of other proposals, Mr. Chairman, but since I have certainly spoken more than my 300 seconds, I will let my statement speak for itself. With your leave, Mr. Chairman, I would like to incorporate the statement of the American Bar Association in the hearing record.

Senator SIMPSON. Without objection, it is so ordered.

Thank you, Dave.

[The prepared statement of David Carliner follows:]

PREPARED STATEMENT OF DAVID CARLINER

Mr. Chairman and Members of the Subcommittee:

My name is David Carliner and I practice law in the District of Columbia. I very much appreciate this opportunity to appear before you today, in my capacity as the representative of the American Bar Association, to express the Association's views on the important Immigration Reform Legislation introduced by you, Mr. Chairman, S. 529. I currently serve as chairman of Committee on Immigration, Naturalization and Aliens of the A.B.A.'s Section of Administrative Law, and in that capacity I have closely monitored the progress of immigration reform proposals during the last Congress and worked with representatives of other interested A.B.A. sections in the development of the recently-adopted A.B.A. policy to which I will refer today.

Since I last appeared before you as the representative of the Association, the A.B.A. has carefully studied your legislation and other proposals pending in the 97th Congress. As a result of that study the Association's policy-making House of Delegates, meeting in New Orleans just three weeks ago, adopted a series of thirteen new policies on some of the more important aspects of legislation before you. During that meeting, the House of Delegates also voted to reverse the Association's 1976 resolution in support of employer sanctions, and directed the establishment of a committee to work with Congress in this important task of reforming our nation's immigration and naturalization laws. It is useful to note that this committee will be composed of representatives of the Section of Administrative Law, the Section of Criminal Justice, the Section of Individual Rights and Responsibilities and the Section of International Law. The coordination which this committee will facilitate among the interested A.B.A. groups will permit the Association to continue the review of the various needed immigration reforms and to recommend further changes as appropriate. Many of the recommendations recently adopted by our House of Delegates to which I will refer have had their genesis in Association resolutions adopted over the past thirty years. I trust this continuity in order to suggest the deliberativeness of the Assocication's consideration of needed immigration reform and our hesitancy to recommend changes in this nation's immigration laws solely on the basis of current day problems and serious and unique crises which recently have confronted this nation.

I. Strengthened Enforcement and Administration of Existing Legal Authority.

The A.B.A. urges that those federal agencies charged with administering the immigration and refugee laws and the pertinent laws governing fair labor standards and practices be provided sufficient resources and organization to enforce and administer the laws effectively and fairly. The borders of this country are extensive and essentially porous. They are patrolled by the Immigration and Naturalization Service, which long has been treated as the unwanted stepchild of the federal government, and has been denied the resources necessary to enforce and administer the law. Controls over foreign students, tourists, and other non-immigrant visitors to the United States have been exceptionally lax.

The law enforcement resources of, and administration of benefits by, the Immigration and Naturalization Service have trailed seriously behind the Service's workload. Inadequate staffing and management, including the failure to automate, have been crippling. Both the Reagan Administration and the bipartisan Select Commission on Refugee Policy, recommended strengthening existing law enforcement programs and administration. There is a continuing and now acute need for Congress to appropriate additional funds to strengthen the Border Patrol and other enforcement efforts: to provide for the operation of helicopters and other needed equipment, and to automate the immigration and nonimmigrant document control system and control of other alien records. Moreover, by targeting resources in priority states, such as California, Texas, Florida, Illinois and New York, enforcement and administration can be enhanced further. Although the American Bar Association supports the Novemeber 1978 amendments to Section 274 of the Immigration and Nationality Act of 1952 concerning forfeiture of vehicles, the A.B.A. specifically opposes further amendments of those provisions.

In addition, both the Select Commission and the Reagan Administration proposed increased enforcement by the Wage and Hour Division of the Labor Department to discourage the employment of aliens, as well as others in violation of the Fair Labor Standards Act.

II. Reforms to Assure an increased Flow of Economic and Cultural Benefits to the United States.

To promote international trade, many developed countries of the world waive visas for tourists and certain business travelers visiting for a short period of time. It is believed that the United States should adopt such a system. Beyond benefiting international trade and tourism, the adoption of such a system would relieve State Department and I.N.S. employees from unnecessary work, and to that extent enable more attention to be devoted to other aspects of the administration of immigration laws that are now being neglected

With respect to the quota system for immigrant visas, the 1965 amendments to the immigration laws weighed family reunification more heavily than economic and cultural benefits to be derived by the United States. Indeed, of the approximately 800,000 people immigrating to the United States legally last year, only 40,000 were aliens entering for employment in positions requiring skills in short supply.

The Select Commission advocated reform of the immigration system to assure that greater emphasis be given to the flow of economic and cultural benefits to the United States vis-a-vis consideration of family reunification in the allocation of quota numbers for aliens entering permanently as immigrants. The American Bar Association supports this policy.

III. Employer Sanctions.

The American Bar Association recommends that employer sanctions should be rejected because they would be an unworkable, ineffective, expensive and discriminatory procedure for controlling undocumented immigration. Such sanctions are viewed as a mechanism for reducing the flow of unauthorized entrance by eliminating what some believe to be the primary incentive for illegal immigration: job availability. The proposed legislation attempts to remove this incentive by imposing penalties on employers who hire undocumented workers. Furthermore, it is argued, by restricting job opportunities for such workers, job displacement of native and legal workers would be reduced.

It is undisputed that many aliens presently reside and work in the United States and that there is a great need to end whatever human misery is caused by employers who exploit foreign workers. Employer sanctions, however, would involve immense financial and social costs without insuring that such sanctions can or will accomplish their purported goal. Implementation of an effective program also would be impossible due to budgetary constraints, constitutional limitations on I.N.S. enforcement powers, and the broad defense to liability.employers would be provided under the legislative proposals. Even assuming the unlikely possibility of an effective sanctions program, there is no conclusive empirical evidence to demonstrate the benefits of such a program. Indeed, if an employer sanctions program would not reduce the flow of illegal immigration, but would increase the likelihood of employment discrimination against minority citizens and legal residents, such a program would be counterproductive and should be rejected.

The concept of employer sanctions has been debated in Congress for a number of years, but, with one exception, has never found sufficient support to become law. The sole exception is the Farm Labor Contracter Registration Act of 1963, 7 U.S.C. section 2045 (f). Consequently, no federal law prohibits the hiring of undocumented workers. Although twelve states have enacted employer sanction laws, and although that state authority has been upheld, DeCaras v. Bica, 424 U.S. 351 (1976), none of these state laws presently is in effect. Likewise, the idea of employer sanctions is not new to the American Bar Association, which endorsed the imposition of economic and criminal sanctions against employers in 1976. However, since that time, various A.B.A. entities have studied the experience with sanctions and the likely deliterious effects of the imposition of sanctions. As a consequence, the A.B.A. has been persuaded that employer sanctions would serve no useful purpose and should not be enacted.

Employer sanctions would be unworkable as demonstrated by the experience of other countries. The recent General Accounting Office study of the use of employer sanctions in foreign countries has documented the universal failure of those sanctions to accomplish their stated purpose in nineteen foreign countries and Hong Kong. The report shows, for example, that Canadian employers are subject to fines of $4,000 or two years imprisonment for "knowingly" employing an illegal alien. However, officials of the Royal Canadian Mounted Police estimate that between 500,000 and 1,000,000 aliens are in Canada illegally and that most of them work. France has an estimated 150,000 to 350,000 illegal alien workers, despite employer sanctions. According to official estimates in West Germany, between 200,000 and 500,000 illegal aliens work.

The G.A.O. report notes that, according to Canadian officials, illegal workers are employed by relatives. Furthermore, court backlogs and legal delays have forced officials to limit prosecutions, and the legal requirement that an employer must "knowingly" engage an illegal worker in order to be convicted makes enforcement even more complicated. Policing aliens in the workplace has not been a high priority among law enforcement agencies, and judges' sentences of convicted employers have been lenient. These are among a few of the demonstrated reasons in just one country why sanctions have been unworkable. It is for such reasons that the Chamber of Commerce of the United States opposes sanctions and why the Wall Street Journal has observed; "Employer sanctions, in short, are even less likely to be effective in the U.S. than in Canada, France and Germany". Wall Street Journal, October 7, 1982, "Employer Sanctions Don't Work".

Even assuming that such sanctions were found workable, the resources necessary to enforce them would be enormous. Theoretically, the I.N.S. would be charged with monitoring every employer, and investigating, detecting and apprehending suspected violators. Given the current inability of the I.N.S. fully to enforce existing immigration laws, due in part to the lack of resources necessary, it is not likely that Congress would appropriate a large increase in funding necessary to implement an effective sanctions program. Furthermore, the legislation does not specify exactly how the I.N.S. will execute the investigation, detection and apprehension of violators. Although the legislation requires the employers to make available for I.N.S. inspection all documentation regarding an employee's work eligibility, it does not specify under what circumstances the I.N.S. may choose to exercise its authority to inspect such documents, whether notice to the employer would be required before an I.N.S. inspection, and whether I.N.S. would be required to secure a warrant to inspect the employer's records, and if it would be required, what type of showing would be required to obtain it.

Even assuming an employer sanctions program could be effectively enforced and inhibitive of some particular job opportunities, it will not likely reduce the flow of illegal immigration. Even if such a law were enacted, jobs would continue to be available from those employers who perceive the risk of prosecution as remote. If an illegal immigrant is experiencing poverty or political oppression, or wishes to join family members already in the United States, it is unlikely that the added difficulty in finding employment, such as that theoretically posed by this law, will deter the immigrant from illegally entering the United States. Even assuming that employer sanctions would discourage employers from hiring undocumented workers, there is no guarantee that such jobs would be filled by U.S. citizens and documented workers. A 1975 study (Piore, "Impact of Immigration on the Labor Force," Monthly Labor Review, 1975) by a noted economist has suggested that undocumented workers take jobs that are unwanted by American workers because such jobs are low-skill, low-paying and carry little opportunity for advancement. Moreover, even the theoretical availability of such employment may be substantially offset by the export of secondary jobs to foreign countries by employers who view cheap foreign labor and little or no regulation of working conditions as the next best alternative to the employment of undocumented workers.

Finally, no employer sanction program can be implemented without discriminating against minority citizens and legal resident aliens. Discrimination is inherent in the law's requirement that a person show certain documents before he or she can work. It simply is a truism that minorities, including "foreign-looking" citizens, legal residents and women find it most difficult to attain stable jobs often because of employment discrimination. Employers already disposed to discriminate against "foreign-looking" persons will perceive that employer sanctions legitimize, even encourage, such discrimination. Those employers who are not presently discriminating against minorities may perceive that the safest way to avoid sanctions is by not hiring any "foreign-looking" job applicants for fear that they may turn out to be undocumented workers.

For these reasons the American Bar Association has serious doubts that employer sanctions could stem the tide of illegal immigration. Other alternatives for controlling unlawful immigration should be fully explored and the precise reason for implementing such controls should be carefully identified. For example, if the goal is to reduce exploitation of undocumented workers and eliminate the incentive to hire workers who will work in substandard conditions, that goal will better be accomplished by enforcing existing wage and hour laws. Another alternative is for our government to carefully evaluate its foreign aid and investment policies to facilitate autonomous economic development in the poorest countries. Illegal immigration is a complex international phenomenon affected by political, social and economic factors which may not be susceptible to purely domestic solutions.

IV. Imposition of 30-Day Limitation for Judicial Review of Administrative Decisions

Section 106(a) of the Immigration and Nationality Act, 8 U.S.C. § 1105a(a), provides that a petition for review of a deportation order "may be filed not later than six months from the date" of any final deportation order. No time limit is prescribed for the filing of a petition for a writ of habeas corpus to review either a deportation order, 8 U.S.C. § 1105a(a)(9), or an exclusion order, 8 U.S.C. § 1105a(c); or for review of other administrative decisions arising under the Immigration and Nationality Act, 8 U.S.C. § 1329.

In support of its proposal to amend the present provisions of the Immigration and Nationality Act to impose a 30-day limitation on the filing of petitions for review and habeas corpus or other petitions, the Immigration and Naturalization Service has suggested that deportable aliens are able to obtain "extra years" in the United States by filing frivolous petitions for review. This is contradicted both by the language of the statute and by the practice of the reviewing courts.

Section 106(a)(7) of the Immigration and Nationality Act, 8 U.S.C. § 1105(a)(7), provides explicitly

> "that nothing in this section shall be construed to require the Attorney General to defer deportation of an alien after the issuance of a deportation order because of the right of judicial review of the order granted by this section . . . . [or] to preclude the Attorney General from detaining or continuing to detain an alien or from taking him into custody . . . at any time after the issuance of a deportation order."

The Immigration and Naturalization Service is thus able to execute an order of exclusion or deportation under its current regulations 72 hours after the entry of a final administrative order.

In addition, petitions for review filed in a court of appeals and resultant stays of deportation are subject to a summary motion to affirm upon the ground that the petition is frivolous. See 8 U.S.C. § 1105a(a)(3) and Rule 27, Rules of Federal Appellate Procedure, a rule that has been invoked by the Immigration and Naturalization Service when the agency thought it warranted. See Asai v. Castillo, 593 F.2d 1222 (D.C. Cir. 1979); Der-Roug Chour v. INS, 578 F.2d 564 (2d Cir. 1978).

The filing of an action in a United States district court to review other administrative decisions of the Immigration and Naturalization Service, including a denial of student reinstatement, does not operate to stay deportation, unless the district court grants a preliminary injunction. A preliminary injunction is granted only when the customary requirements are satisfied, including the making of a showing that the claim is not frivolous.

Moreover, the Immigration and Naturalization Service has not shown that the present provisions of the Immigration and Nattionality Act have raised a substantial impediment to its enforcement of deportation orders. During 1979, the latest year for which information is available, 249 petitions for review of deportation cases were filed in the courts of appeals; 57 petitions for writs of habeas corpus and 159 declaratory judgment actions were filed in the district courts. The total number of aliens ordered deported after hearings was 25,896; 966,137 were required to depart without hearings.

Thus, there is no reason for shortening the time allowed to file actions for judicial review other than general considerations of repose and administrative convenience. In other fields of administrative action, even those with much less severe impact upon individuals' lives, these considerations are usually thought adequately served by a 60-day limitation upon appeal. There is no justification for a more rigorous rule in immigration cases. It should be noted that a 30-day period would as a practical matter provide significantly less than that amount of time for the immigrant and the attorney involved. Decisions of the Immigration and Naturalization Service, if not of the Board of Immigration Appeals, are rarely served or mailed on the date the decision is rendered; it is frequently one to two weeks before the alien or the attorney of record receives notice. In many, if not most, of the administrative decisions made outside of deportation or exclusion proceedings, and often even in those proceedings, the alien is not represented by counsel, which means that an attorney must be retained and familiarized with the case before the decision to appeal can be made. In such circumstances, a time limit of 30 days may effectively bar judicial review.

V. Asylum Proceedings

The procedures for granting asylum in the United States to aliens claiming persecution in their native countries, like the substantive benefit of asylum itself, evolved administratively without a specific grant of statutory authority until the Refugee Act of 1980.[1]

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[1] This is to be distinguished from applications for "stays of deportation" of aliens within the United States to a particular country upon the ground of probable persecution, provided for in 8 U.S.C. § 1253(h), a provision of the Immigration and Nationality Act of 1952.

The statute relied upon previously -- and still, for certain types of applications -- is the broad grant of power vested in the Attorney General by 8 U.S.C. § 1182(d)(5), which authorizes him "in his discretion [to] parole into the United States temporarily under such conditions as he may prescribe for emergent reasons or for reasons deemed strictly in the public interest any alien applying for admission to the United States . . . ."

Based upon this statutory provision, the Attorney General has "paroled" into the United States more than 40,000 Hungarians following the uprising in 1956, approximately 800,000 Cuban refugees since 1965, more than 300,000 Vietnamese, Cambodian and Laotian refugees since 1975, and thousands of additional refugees from other countries.

It was not until a widely publicized episode, the Kurdika incident in 1970 when a seaman leaped from a Russian fishing trawler to seek refuge on a United States Coast Guard vessel, only to be returned to Soviet authorities, that formal procedures were prescribed for acting upon applications fo asylum by persons seeking entry to the United States. These were set forth, not in administrative regulations but in internal operations instructions for the personnel of the Immigration and Naturalization Service. These procedures authorized INS district directors to grant parole to applicants for asylum after interviews rather than adjudicatory hearings. Denials were referred to the State Department for advisory opinions with review by an INS regional commissioner if the State Department disagreed with the district director's decision.

These procedures were challenged by Haitians whose applications for asylum were routinely denied as frivolous. Although the Fifth Circuit in Pierre v. United States, 547 F.2d 1281 (5th Cir. 1977), upheld the validity of the INS procedures, the INS thereafter proposed to adopt regulations providing for evidentiary hearings on applications for asylum to be conducted by immigration judges in formal adjudicatory exclusion proceedings. The Supreme Court granted certiorari, vacated the Fifth Circuit judgment and remanded for consideration of the question of mootness. 434 U.S. 962 (1977).

After prolonged consideration from November 1, 1977, until April 10, 1979, the INS adopted regulations that permitted applications for asylum to be acted upon by district directors and, in the event of denial, to be reviewed de novo by immigration judges in either exclusion or deportation proceedings (depending on whether the alien had been paroled into the United States and therefore was regarded as seeking entry, or had been admitted into this country otherwise and therefore was subject to deportation proceedings as an alien "within the United States"). See 41 Fed. Reg. 21253-59 (1979). With the enactment of the Refugee Act of 1980, the asylum regulations were somewhat revised but substantially adopted anew on June 2, 1980. 45 Fed. Reg. 37394, 8 C.F.R. Pt. 208.

These procedures are now regarded by the Immigration and Naturalization Service as too cumbersome. The then acting commissioner, Doris M. Meissner, testified before the Senate Subcommittee on Immigration and Refugee Policy that "the Immigration and Naturalization Service received approximately 3,702 applications for asylum in 1978 and 5,801 in 1979. Between March 1980 when the Refugee Act passed and July 1981, 53,034 applications for asylum were filed by persons physically present in the United States." She said that the "sheer number of asylum applications" had taxed the resources of the Service and the State Department and she thought the "complexity of the asylum process" a major drawback.

In place of the present procedures, proposed legislation provides for a determination of eligibility for asylum by an "asylum officer" in the agency after "an informal, nonadversary interview," at which the alien may be accompanied by counsel who may advise but not otherwise participate; the decision of the asylum officer is made final, not subject to further administrative review except in the discretion of the Attorney General or the Commissioner.

David Milhollan, chairman of the Board of Immigration Appeals, in his testimony before the subcommittee reported that the Board docketed 3,822 cases in fiscal 1981, an increase of 1,042 over fiscal 1980, in which oral arguments were held in 249 cases. Mr. Milhollan explained:

> "The tremendous increase in the number of incoming appeals is attributable to cases resulting from the Iranian hostage situation and the Cuban flotilla. We received approximately 650 cases involving Iranian nationals, most of which were deportation proceedings concerning Iranian students. We also received over 400 exclusion cases involving nations of Cuba who arrived during the flotilla. Asylum was one of the issues present in all the cases. . . . While we are no longer receiving a large number of Cuban exclusion cases, the fine appeals and cases involving Iranians continue to arrive at the Board."[2]

In discussing the function of the Board of Immigration Appeals, Mr. Milhollan stated that its

> "primary mission . . . is to carry out the congressional mandate that the immigration laws receive uniform application throughout the United States. The Board accomplishes this by interpreting provisions of the immigration

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[2] Exclusion proceedings for recent Haitian entrants to the United States were suspended by INS between November 7, 1980, and January 28, 1981, as a result of a court order.

> laws in its decisions and by reconciling inconsistent orders issued by different officers of the Immigration and Naturalization Service regarding either the application of law or policy or the exercise of discretion. The Board's role minimizes the extent of Federal court review of decisions of the Immigration and Naturalization Service. Historically, a small percentage of Board decisions will be appealed into the Federal courts and an even smaller percentage reversed on appeal."

The ABA believes that, where the stakes are as high as they are in asylum cases, the "complexity of the asylum process" does not justify eliminating the present opportunity to appeal denials of asylum applications to an independent body, such as the Board of Immigration Appeals. See Haitian Refugee Center v. Civiletti, 503 F. Supp. 422, 454-55 (S.D. Fla. 1980):3

> "In considering a request for asylum, the District Director must weigh various issues which realistically involve the applicant's life, liberty and property in a most direct fashion. In a very graphic sense, the political asylum applicant who fears to return to his home because of persecution has raised the specter of truly severe deprivations of life, liberty and property . . . ."

The ABA believes that the possibility of error and injustice in determining asylum applications will be reduced if the right of appeal to an independent administrative body is preserved.

A. INCREASED OPPORTUNITY FOR ARBITRARY DECISIONS

The limitation or elimination of administrative appeals would increase opportunities for the arbitrary exercise of governmental power in a field where the federal government already has virtually unfettered discretion 4/ and where its decisions profoundly affect

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3/ See opinion for an especially comprehensive treatment of the issues.

4/ Lapina v. Williams, 232 U.S. 78 (1914); Fong Yue Ting v. United States, 149 U.S. 698 (1893); Chae Chan Ping v. United States, (The Chinese Exclusion Case), 130 U.S. 581, (1889); United States ex rel. Harisiades v. Shaughnessy, 187 F.2d 137 (3d Cir. 1951) aff'd 342 U.S. 580 (1952); Kleindienst v. Mandel, 408 U.S. 753 (1972); Mathews v. Diaz, 426 U.S. 67 (1975); Fiallo v. Bell, 430 U.S. 787 (1977); Narenji v. Civiletti, 617 F.2d 745 (D.C. Cir. 1979).

human lives. Imposing generally accepted standards of due process on immigration proceedings has been an on-going effort for several decades. In a recent San Diego Law Review article, Maurice A. Roberts 5/ describes how early proceedings were conducted before an immigrant inspector who combined prosecutorial and quasi-judicial functions, and how the Immigration Service (INS) succeeded in stampeding Congress into exempting exclusion and deportation proceedings from the Administrative Procedure Act. 6/

By the time the Immigration and Nationality Act was enacted in 1952, the need for more impartial procedures was recognized to the extent that tis deportation hearing provisions were later upheld as providing the functional equivalent of the Administrative Procedure Act safeguards. 7/ Passage of the current proposals limiting access to an administrative appeal would represent a significant setback in these longstanding efforts to achieve full due process rights for aliens.

While due process is a concern in all areas of immigration law, the current proposals specifically affect asylum procedures, i.e., the manner in which refugee status is determined for someone who happens to be already in the United States or who is at the border seeking admission. Because the United States is a signatory to the United Nations Convention Relating to the Status of Refugees, its obligations under international aw must also be considered when Congress legislates in regard to refugees. Article 33 of the Convention prohibits the expulsion or return of a refugee to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership in a particular social group or political opinion. In acceding to the 1967 Protocol to the Convention, the United States undertook to apply this article to refugees. By entrusting the determination of refugee status to one official only, the opportunities for an arbitrary decision which violates the Convention are increased.

5/ Editor of Interpreter Releases and former Chairman, 1968 to 1974, of the Board of Immigration Appeals.

6/ Roberts, Maurice A., "Proposed: A Specialized Statutory Immigration Court," San Diego Law Review, Vol. 18, No. 1.

7/ Marcello v. Bonds, 349 U.S. 302 (1955).

The increased likelihood of arbitrary decisions as a result of restrictions on the rights to an administrative appeal comes partly from the fact that when a single official has sole authori for making a decision, that person's individual disposition and preferences are more apt to influence the decision. The increase potential for arbitrary decisions also comes from the fact that, in spite of the progress made over the years, the immigration judg are not truly independent adjudicators. This problem is a common one in administrative law and has been recognized as such by many authorities, including a former President of the American Bar Association, Bernard G. Segal. Writing in the ABA Journal, Mr. Segal describes the problems of maintaining independence when the administrative law judges have offices in the same building as the agency staff, where the seal of the agency adorns the bench, and where a judge's assignment to a case is made by the agency whose action the judge will review. 8/ In the case of immigration judge they are directly dependent on the District Directors, and indirectly on the Regional Commissioner, for virtually their entire support, including office space, hearing facilities, clerical staff, etc.

These problems, because they were considered to be of "acute concer," were recently discussed by Charles Foster, current preside of the American Immigration Lawyers Association, in testimony prese for the Association to the Senate Subcommittee on Immigration and Refugee Policy on October 16, 1981. A recent proposal to amend

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8/ Segal, Bernard G., "The Administrative Law Judge: Thirty Years of Progress and the Road Ahead," 62 A.B.A.J. 1424 at 1426, (Oct. 1976).

INS Administrative Manual to provide for efficiency ratings of immigration judges would add another element of possible agency control.9/ This potential for agency control of immigration judges under the present system and the susceptibility of decisions to the preferences and prejudices of one individual are important reasons why an administrative appeal should be generally available. Without the availability of such a review, there will be a greatly increased number of arbitrary decisions in violation of accepted standards of due process.

B. DECREASED OPPORTUNITY FOR UNIFORMITY OF DECISIONS

Besides serving as a check on arbitrary decisions, administrative appeals also promote uniformity in the law and help to create standards so that the same set of facts is more likely to produce the same decision, regardless of whether the case is first presented in New York, Chicago, or Los Angeles. In the words of a former General Counsel of the Immigration Service, "[a]ppeals not only help achieve fair decisions; they promote uniformity which is essential to both fairness and efficiency."10/ Another authority has written:."The elimination of an appellate body would likely produce more disparate treatment of aliens in the different parts of the United States. Moreover, by subjecting decisions of individual immigration judges to a process of collective scrutiny, an appellate body provides an important error-correcting function."11/

Uniformity and the error correcting function assume even greater importance when it is remembered that the current legislative proposal is to eliminate administrative appeals for virtually all asylum applications. Because the Refugee Act of 1980 is less than two years old, there has not been time for interpretative standards and criteria to be developed. The opportunities for error and disparate decisions are thus enhanced in this perticular area, and, of course, it is in this area that lack of criteria and errors in adjudication are likely to produce the most serious consequences for the applicant. Even when INS does not move to expel an individual whose claim for asylum has been denied, significant consequences can still result for the alien. Because he or she is left in an indefinite limbo with few opportunities under current law to become a permanent resident, such an individual frequently has great difficulty in obtaining employment, and may be denied access to needed services and benefits.

9/ Interpreter Releases, Vol. 58, No. 35, September 5, 1981, p. 446.

10/ Berensen, Sam, "INS: An Agency With Too Many Problems," Interpreter Releases, Vol. 58, No. 25, June 30, 1981, p. 337.

11/ Levinson, Peter J., "A Specialized Court for Immigration Hearings and Appeals," Notre Dame Lawyer, Vol. 56, No. 4, April, 1981, p. 650. Mr. Levinson is currently Minority Counsel for the House Subcommittee on Immigration, Refugees, and International Law.

For the reasons discussed above, the American Bar Association opposes legislation that would not provide that all persons subject to administrative orders of exclusion or deportation or to denial of asylum claims have the right to an administrative appeal to an independent body.

VI. AVAILABILITY AND SCOPE OF JUDICIAL REVIEW

A. CURRENT LAW

In 1961, Congress passed legislation providing for the filing of a petition for review of deportation orders in the circuit courts of appeals. Under this provision, a petition can be filed within six months in the United States Court of Appeals where the deportation proceeding was conducted or the petitioner resides. The legislation eliminated declaratory review of exclusion and deportation orders in district courts, but expressly preserved the right to habeas corpus.12/ The petition remedy permits an alien to obtain a definitive court ruling before experiencing the disruption and dislocation required to comply with an order of deportation.

In the immigration area, under current law, courts may directly review errors of law, including whether agency personnel have proceeded in violation of statute or Constitution.13/ Direct review is also available with respect to procedural unfairness in the agency, such as deprivation of the right to counsel,14/ or in the conduct of a hearing.15/

The factual basis for the order may be reviewed in order to ascertain whether there is "substantial evidence" in the record to support the determination.16/ Also, administrative discretion may

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12/ Section 106, Act of 1952, 8 U.S.C. § 1105a, as amended by § 5, Act of September 26, 1961, P.L. 87-301, 75 Stat. 651.

13/ In the exclusion context, constitutional entitlements are somewhat restricted. *Shaughnessy v. Mezei*, 345 U.S. 206 (1953); *Knauff v. Shaughnessy*, 338 U.S. 537 (1950).

14/ *Chlomos v. U.S. Dept. of Justice*, 516 F. 2d 310 (3rd Cir. 1975); *Castro-Nuno v. I.N.S.*, 577 F. 2d 577 (9th Cir. 1978).

15/ *Hirsch v. I.N.S.*, 308 F. 2d 562 (9th Cir. 1962) [order predicated on charge different from that presented at hearing]; *Si v. Boyd*, 243 F. 2d 203 (9th Cir. 1957) [production of prior statement by witnesses]; *Hyun v. Landon*, 219 F. 2d 404 (9th Cir. 1955) *aff'd by equally divided court*, 350 U.S. 990 (1956) [depositions taken without notice].

16/ *Ocon v. Del Guerico*, 237 F. 2d 177 (9th Cir. 1956). *See* 8 U.S.C. § 1105a (4) regarding deportation orders.

be reviewed to determine whether that discretion has been abused, including whether discretion has actually been exercised,17/ or whether it has been abused in its exercise. 18/ While the circumstances in which a particular standard is applied are not always clearcut,19/ the level of judicial scrutiny is generally quite limited. Indeed, review is ordinarily limited to the administrative record, and a court will not conduct a *de novo* hearing on matters which were or should have been considered in the administrative proceeding.20/ One exception to the rule is a challenge based on unfairness outside of the administrative record.21/

17/ *Accardi v. Shaugnessy*, 347 U.S. 260 (1954).

18/ *Hang v. I.N.S.*, 360 F. 2d 715, 719 (2d Cir. 1966) [discretion would be abused "if it were made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis such as an invidious discrimination against a particular race or group."]

19/ For example, administrative action in the immigration area is sometimes analyzed in two phases; (1) an alien's statutory eligibility for a benefit applied for, and (2) a discretionary determination as to whether the benefit should be accorded. Ordinarily, the substantial evidence standard is applied to the former, and the abuse of discretion standard to the latter. In some instances, however, the preliminary appraisal of eligibility may involve issues of fact, e.g., "good moral character" or "hardship." some courts have found the abuse of discretion standard applicable to these elements. *See*, e.g., *Anderson v. Holton*, 242 F. 2d 596 (7th Cir. 1957); *Brownell v. Cohen*, 250 F. 2d 770 (D.C. Cir. 1957); *Estrada-Ojeda v. Del Guerico*, 252 F. 2d 904 (9th Cir. 1958). Other courts have found the substantial evidence standard appropriate. *See, e.g.*, *Brathwaite v. I.N.S.*, 633 F. 2d 657 659 (9th Cir. 1980); *Chan v. I.N.S.*, 631 F. 2d 964, 972 (5th Cir. 1981), *cert. den.*, 452 U.S. 917 (1981).

20/ *Kessler v. Strecker*, 307 U.S. 22 (1939). *See* 8 U.S.C. § 1105a(a)(4) as to deportation cases.

21/ *See Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

B. PROPOSED REVISION OF PROCEDURES RELATING TO JUDICIAL REVIEW

Section 123(b)(1)(A) of S. 529 provides:

> "Notwithstanding any other provision of law ... There shall be no judicial review of a final order of exclusion or a final order respecting an application for asylum."[22]

This legislative proposal is redolent of an ancient but continuing controversy regarding the nature of judicial review of the decisions of the Immigration and Naturalization Service that began with the enactment of the Administrative Procedure Act.

The position of the Service and of the Department of Justice has been, and is, that review of exclusion and deportation orders is, or should be, limited to the constitutional right of habeas corpus with the intention of thus limiting the scope of review to the bare constitutional minimum in exclusion cases for sure and arguably also in deportation cases. Thus the language of the proposed section 123(b)(1)(A) is intended to graft onto the statute the rule of an 1892 decision of the Supreme Court in Ekiu v. United States, 142, U.S. 651, 660:

> "Congress may, if it sees fit, ... authorize the courts to investigate and ascertain the facts on whihc the right [of an alien] to land depends. But, on the other hand, the final determination of those facts may be entrusted by Congress to executive officers; and in such a case, as in all others, in which a statute fives a discretionary power to an officer, to be exercised by him upon his own opinion of certain facts, he is made the sole and exclusive judge of the existence of those facts, and no other tribunal, unless expressly authorized by law to do so, is at liberty to reexamine or controvert the sufficiency of the evidence on which he acted."

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[22] The proposed legislation appears intended to eliminate the type of judicial review obtained by Haitian asylum applicants in Haitian Refugee Center v. Civiletti, 503 F. Supp. 422 (S.D. Fla. 1980).

As explained by the Attorney General in transmitting the original legislation to Congress:

> "Subsection 208(d) provides that judicial review of an asylum claim is reviewable in the context of judicial review of an order of exclusion or deportation as provided in section 106(a) of the Act, 8 U.S.C. 1105a, and that a claim is not reviewable under the Administrative Procedure Act. The standard for review is that the denial of the asylum application was arbitrary or capricious, or otherwise not in accordance with law. This provision will allow review of the great majority of asylum claims made by aliens who are placed in deportation or exclusion proceedings, but will not provide for judicial review of asylum claims by persons who maintain a lawfuyl status in the United States. This provision does not address the use of petitions for writs of habeas corpus which will probably continue to provide an additional means of review for all aliens taken into custody following a finding of excludability or deportability." (S.1765, 97th Cong. 1st Sess.)

At the very outset of this controversy, the American Bar Association opposed the effort to limit judicial review of decisions of the Immigration and Naturalization Service. In 1951, the late Jack Wasserman, representing the Association, was successful in obtaining deletion of a limitation on judicial review in the omnibus legislation that ultimately became the Immigration and Nationality Act of 1952. A section of that bill as introduced provided that "determinations of fact by administrative officers under the provisions of this Act shall not be subject to review by any court." Mr. Wasserman told the subcommittees of the committees on the judiciary that with this elimination of judicial review:

> "The administration of our immigration and naturalization laws will ... become an administration of men rather than of laws. There is no compelling reason for these proposals. The checks and balances exercised by the judiciary insure greater impartiality in our administrative officials." Joint Hearings on S. 716, H.R. 2379 and H.R. 2816, 82nd Cong., 1st Sess. 527 (1951).

Subsequently, in 1958, the House of Delegates of the American Bar Association adopted the following resolution:

> "Be it resolved that the American Bar Association favors judicial review under section 10 of the Administrative Procedure Act of deportation and exclusion orders under the Immigration and Nationality Laws of the United States . . ." (Approved in February 1958 and reaffirmed in May 1973 and August 1974.)

The 30 years of experience with the decisions of the Immigration and Naturalization Service have established the wisdom of the policy of the Association in supporting judicial review under the Administrative Procedure Act of all decisions rendered by the Service. This view is especially reinforced by an examination of the administrative and judicial decisions concerning asylum issues. *See* Note, *Judicial Review of Administrative Stays of Deportation: Section 243(h) of the Immigration and Nationality Act of 1952*, 1976 Wash. U.L.Q. 59; Evans, *Political Refugees in the United States Immigration Laws*, 66 Am. J. Int'l L. 571 (1972); *Political Refugees in the United States Immigration Law and Practice*, 3 Int'l Lawyer 242 (1969).

The current effort to limit judicial review of agency actions in immigration matters arises not so much because there has been "overuse" or an "abuse of judicial remedies." but because of disagreement with several leading judicial decisions regarding the conduct of asylum proceedings for Haitians and the detention policy for Haitians and for Cubans. *See Haitian Refugee Center* v. *Civiletti*, 503 F. Supp. 422 (S.D. Fla. 1980), and *Rodriguez-Fernandez* v. *Wilkinson*, 654 F.2d 382 (10 Cir. 1981). The volume of litigation, measured against the administrative actions taken by the Immigration and Naturalization Service, including formal deportation and exclusion proceedings, does not suggest that the courts have been overburdened with review of immigration decisions affecting deportation, exclusion, and asylum determinations. How small is the number of judicial proceedings relative to the number of deportations and exclusions has been stated above in the discussion of the timing of judicial review.

Apart from dissatisfaction with the decisions of several courts regarding the conduct of the Immigration and Naturalization Service, and an occaisional repetitive resort to judicial review by aliens who seek to prevent their deportation from the United States, no showing has been made of a need to divest the courts of jurisdiction to review decisions regarding the reopening or reconsideration of exclusion or deportation proceedings, asylum determinations outside of such proceedings, the reopening of an application for asylum because of changed circumstances, the denials of a stay of execution of an exclusion or deportation order, or orders barring aliens from entering the United States. To the extent that any of these decisions involve the proper exercise of administrative discretion, protection against judicial interference is already provided by the terms of the Administrative Procedure Act itself, which limits the scope of judicial review to "an abuse of discretion," 5 U.S.C. §706(a)(2), and does not apply to the extent that "agency action is commited to agency discretion by law," 5 U.S.C. §701(a)(2). These built-in limitations are adequate to protect the valid concerns of the Immigration and Naturalization Service, as they do the concerns of all other agencies generally subject to the fundamental principle of judicial review. There is no justification for abandoning that principle in these important cases.

VII. ELIMINATION OF IMMIGRATION JUDGE HEARING FOR CERTAIN ENTRY APPLICANTS AND EXCLUSION OF NON-ASYLUM ISSUES

Since 1903, the immigration laws have provided that an applicant for entry into the United States whose admissibility is questioned must be referred for a hearing on his admissibility. Originally, such hearings were conducted by bodies known as boards of special inquiry. However, the Immigration and Nationality Act of 1952 directed that such hearings were to be conducted by a single special inquiry officer, §236(a), 8 U.S.C. §1226(b), now known as an immigration judge, 8 C.F.R. §1.1(l).

Sec. 235 (b) of the Immigration and Nationality Act, 8 U.S.C. §1225(b), now specifies that every alien "who may not appear to the examining officer at the port of arrival to be clearly and beyond a doubt entitled to land shall be detained for further inquiry to be conducted by a special inquiry officer.[23] Hearings before immigration judges must conform to statutorily designated procedural requirements. Act §236(a), 8 U.S.C. §1226(a); 8 C.F.R. Pt. 236. An adverse decision of an immigration judge can ba appealed to the Board of Immigration Appeals, as the delegates of the Attorney General. Id. §236(b), 8 U.S.C. §1226 (b); 8 C.F.R. §3.1(b)(1), 236.6.

Our system of hearings in exclusion cases has been tested and proved during its 80-year history and is unmatched in any other nation. Its insistence on scrupulous fairness for the stranger is a credit to our national sense of justice. There is no adequate justification for abandoning or curtailing it.

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[23] There are three exceptions to this hearing requirement:

(1) Alien crewmen, for whom a special procedure is prescribed in §252 of the Act, (U.S.C. §1282;

(2) Entry applicatns whose admissibility is questioned on confidential security grounds, for whom a special procedure is prescribed in §234(c) of the Act, 8 U.S.C. §1225(c);

(3) Stowaways, for whom a special procedure is prescribed in §273(d) of the Act, 8 U.S.C. §1232(d).

The proposal to limit the right to exclusion hearings originated in the Administration's proposed immigration legislation. The Administration bill proposed to limit hearings of entry and asylum applicants, to restrict assistance of counsel and judicial review, and to require prolonged detention of entry and asylum applicants.

The present legislation has eliminated some of the objectionable features of the Administration's original bill. However, it has retained the restrictions on exclusion hearings, apparently because of a view that serious abuses had developed in the exclusion process. It would amend the present section 236(b) quoted above to provide that persons who do not appear "to have the documentation required" for entry into the United States or to have any reasonable basis for such entry may be summarily barred from entry.

The Administration's concern manifestly was aroused by the special problems encountered in dealing with a large volume of asylum claimants produced by the so-called Mariel Freedom Flotilla from Cuba. Another element in the equation was the Government's frustration in attempting to adjudicate the asylum claims of a relatively small number of Haitians, exemplified by Haitian Refugee Center v. Civiletti, 503 F.Supp. 442 (S.D. Fla. 1980). But the present legislation largely rejects the Administration's effort to limit procedural rights of asylum applicants and indeed requires that asylum applications are to be heard by specially qualified immigration judges. See sec. 124(a) (1), amending section 208 (a) (2) of the Immigration and Nationality Act.

With asylum applications removed, what remains is an insignificant number of exclusion hearings. The most recent available statistics show that in 1980-81, 3,700 exclusion cases were referred to immigration judges for hearing. The number of cases involved thus is relatively small in relation to the total number of aliens seeking entry to the United States each year.

It may be noted that, while the vast preponderance of illegal entrants come from Mexico, they rarely are involved in exclusion hearings. The small proportion of such aliens who are apprehended in the process of entry are usually permitted to return to Mexico immediately. Those apprehended after entry have a constitutional right to a deportation hearing but almost invariably elect to return to Mexico vluntarily.

The assumption that a major change in exclusion procedures is needed in order to deal with difficult administrative problems is thus demonstrably incorrect.. Moreover, in purporting to cope with a problem that proves to be illusory, the bill would inflict major damage on established patterns of fair procedure. Under its terms, a single immigration officer, dealing with a large volume of entrants, could summarily determine that a particular entry applicant should be barred because he did not have "the documentation required for entry" or "any reasonable basis for entry."

Two examples may be given of the possible impact of the proposed amendment. (1) An alien arrives in Honolulu on a trip from Hong Kong. He exhibits a passport containing a visitor's visa issued by the American consul in Hong Kong, but the immigrant inspector decides that he intends to stay permanently. Therefore he regards him as an immigrant who is not in possession of the proper document, an immigrant visa. The officer could then send him back to Hong Kong on the next plane. (2) A person seeking entry from Poland claims to be a citizen of the United States, returning to his home in Chicago. It does not "appear to the examining officer at the port of arrival" that the entry applicant actually is a citizen. Therefore, he sends him back to Poland on the next plane. In neither example, if the bill were enacted, would there be an opportunity for a hearing, the presentation of evidence, representation by counsel, mature consideration by a tribunal unconnected with the enforcement mechanism or administrative or judicial review.

In addition to these limitations, S. 529, while vesting immigration judges with jurisdiction to determine applications for asylum, sec. 124 (a) (1) (A), bars consideration in exclusion proceedings of any questions other than the "issues raised with respect to the asylum application," sec. 121 (5). Since persons who arrive in the United States may have other grounds for seeking admission to this country, such as claims for dual citizenship but may at the same time have a reasonable basis to fear persecution if they are required to return to their countries or origin, there is no occasion to limit the scope of issues that may be considered by an immigration judge, especially since the applicant for asylum is assured a hearing.

The ABA believes that the proposed amendment is not warranted by any abuse of the present procedures, and that it may inflict injustice that will not otherwise be subject to review.

VIII. New Restrictions on Adjustment of Status

Under current provisions of the Immigration and Nationality Act, 8 U.S.C. sec. 1255, an alien who has been admitted to the United States by the Immigration and Naturalization Service may in most circumstances adjust his status to that of a permanent resident, if he is elegible under the relevant provisions of the Immigration and Nationality Act, without going abroad to appear before a United States consular official. He may effect the change by submitting an application to an INS officer in the United States if he has not engaged in unauthorized employment.

The ability to change status within the United States is not limited to aliens who have "maintained continuously a legal status since entry into the United States." Thus, aliens who have been admitted to the United States as visitors for business or for pleasure, as students, as international governmental employees, and in various other statuses, and who have become eligible to obtain immigrant visas, have been able to change their status in the United States although they may have overstayed their permission to remain in this country.

The "Immigration Reform and Control Act of 1983" proposes to deny the privilege of adjustment of status to any person who has "failed to maintain continuously a legal status since entering into the United States." The effect of this change in law is to require that persons who have approved visa petitions and who are eligible to obtain immigrant visas must first return to their countries of origin in order to obtain visas with which to be readmitted to the United States as lawful permanent residents. In addition, all students, regardless whether they have maintained their lawful status, would be ineligible to apply for permanent residence within the United States and would be required to return to their countries of origin in order to obtain immigrant visas with which to re-enter this country as permanent residents.

The ABA believes that these changes in law serve no useful purpose. They would substantially add to the burden imposed upon consular offices abroad, requiring them to adjudicate applications for immigrant visas, a function that can be more efficiently handled by the Immigration and Naturalization Service within the United States.

In addition, the proposed changes in the law would subject persons who are close relatives of American citizens or permanent residents, including spouses, children, parents, and siblings, and persons whose employment has been determined to be urgently needed in the United States because of their skills, to undergo an unnecessary burden and expense in returning to their country of origin for the sole purpose of obtaining an immigrant visa with which to be admitted to the United States. Apart from this burden, the transfer of authority from the Immigration and Naturalization Service, whose decisions are subject judicial review, to American consular officials, whose decisions are not subject to judicial review, would deprive aliens who are denied visas of a judicial remedy that they now have.

The argument in support of the changes in the law is that it is required in order to deter "visa abusers," that is, persons who obtain visas to enter the United States as nonimmigrant visitors but with the intention of remaining in the United States permanently. A change in the law is not required to effect a solution to this problem. The policy of the Immigration and Naturalization Service has long been, and immigration judges and the Board of Immigration Appeals have long held, in the exercise of their discretion, that these abusers are not eligible to change their status within the United States. Ameeriar v. INS, 438 F. 3d 1028 (3d Cir. 1971).

In addition, the proposed legislation singles out students as persons who cannot change their status within the United States, regardless whether they have maintained lawful status. The limitation upon the ability of students to change their status in the United States is accompanied by a proposed change in the law requiring them to return to their countries of origin for a period of two years before they can qualify to become permanent residents. However, this requirement can be waived if there is a showing of exceptional and unusual hardship upon a citizen or permanent resident of the United States or if the services of the student are required in this country for reasons of the public interest. The ABA takes no position on the proposal that students be required to return to their countries of origin for two years, but it believes that those students who have been granted a waiver of this requirement whould be able to adjust their status within the United States without the need to go abroad and appear before a consular officer.

IX. Formal ALJ Proceedings for Imposition of Civil Penalties

Certain pending immigration legislation contains provisions for imposing penalties on employers who employ aliens who do not have legal permission to work in the United States. The ABA takes no position on the desirability of such penalties but is concerned solely with the type of administrative proceeding that should be held if the penalties are indeed prescribed by a law that provides for administrative assessment of such penalties.

Civil penalties are used in many regulatory areas. E.G., Atlas Roofing Co. v. Occupational Safety and Health Review Commission, 430 U.S. 442 (1977). They have been a significant enforcement tool under the immigration laws since 1903, levied primarily against transportation lines that fail to observe prescribed safeguards. See Oceanic Steam Navigation Co. v. Stranahan, 214 U.S. 320 (1909).

Under current immigration practice, administrative fines may be imposed through an informal procedure, 8 C.F.R. Pt. 280. The carrier that receives notice of a proposed fine, 8 C.F.R. sec. 280.1, may file a written defense and may request "a personal interview," 8 C.F.R. sec. 280.12. When requested, the personal interview is conducted by an immigration officer, who forwards his findings and recommendation to the district director, 8 C.F.R. sec. 280.13(b). The district director's decision imposing a fine can be appealed to the Board of Immigration Appeals, id., 8 C.F.R. sec. 3.1(b)(4).

The proposed "Immigration Reform and Control Act of 1983" has the following provision for the administrative assessment of fines against employers charged with employing undocumented aliens:

> "Before assessing a civil penalty under this subsection against a person or entity, the Attorney General shall provide the person or entity with notice and the opportunity to request a hearing respecting the violation. Any hearing so requested shall be conducted before an immigration officer designated by the Attorney General, individually or by regulation, in accordance with Section 554 of Title 5, United States Code."

The bill thus adopts, for the new employer sanction provisions, the present practice by authorizing immigration officers rather than courts to conduct proceedings in which the levy of a fine is contested. However, the proceedings as are described as hearings rather than as personal interviews and are directed to be conducted in accordance with 5 U.S.C. sec. 554, the basic adjudication provision of the Administrative Procedure Act. This may well raise a question about the applicability of 5 U.S.C. sec. 556, which specifies that hearings required under 5 U.S.C. sec. 554 must be conducted by an administrative law judge.

Section 107(c)(3) of the Immigration and Nationality Act, which would be added by section 122(a) of the bill, specifically directs that immigration judges shall conduct proceedings for exclusion and deportation, for rescission of adjustment of status, and for asylum. There is no reasonable justification for omitting a similar direction for hearings to assess administrative fines. Section 274A(d) of the proposed statute establishes civil penalties of up to $2,000 for each unauthorized alien in the employ of a particular employer and provides that repeated violations after the imposition of such civil penalties can lead to criminal prosecutions. Before such severe sanctions are imposed, an employer should be afforded the opportunity of a determination by an administrative law judge who is completely divorced from the enforcement apparatus.

X. Appointment of Administrative Law Judges Purusant to APA

A resolution, recommended by the Administrative Law Section and adopted by Association in 1968 and reaffirmed in 1975, urged that special inquiry officers who conduct deportation and exclusion hearings should be subject to the appointment, selection, compensation, and tenure provisions of the Administrative Procedure Act. The proposed "Immigration Reform and Control Act of 1983" provides that the Attorney General "shall, in accordance with the procedures and regulations governing appointment,...appoint immigration judges and set the rate of compensation for such judges."

The ABA believes that there is no basis for selecting, appointing and otherwise dealing with judges who hear immigration cases in a way different from the way all other judges are selected, appointed and otherwise dealt with under the Administrative Procedure Act. That indeed is the purport of the existing resolution stating Association policy.

XI. Appeal of Decisions on Labor Certification Petitions

Section 203 of the proposed "Immigration and Control Act of 1982" prescribes the conditions under which the Secretary of Labor may issue labor certifications required of certain classes of applicants for permanent residence and modifies the present scope of judicial review under the Administrative Procedure Act to permit administrative decisions to be set aside only upon "compelling evidence" that the decision has been made "in an arbitrary and capricious manner." The proposed amendment is silent as to who is entitled to seek review.

The ABA believes that there is no reason to exempt the decisions of the Labor Department from the judicial review provisions of the APA. It proposes revisions in the legislation regarding review of decisions involving the issuance of labor certifications (1) to provide expressly that "any person aggrieved" by the agency's action may have judicial review of the Secretary of Labor's decision is the scope prescribed by the Administrative Procedure Act.

XII. Preservation of Private Remedies Against Employer of Nonimmigrants.

Section 214(c)(2)(5) of the "Immigration Reform and Control Act of 1983" expressly provides authority for the Secretary of Labor to pursue remedial enforcement actions in the case of temporary labor certification violations. No mention is made of the independent right of an aggrieved individual that now exists to pursue the administrative remedies set forth at 20 C.F.R. sec. 658 et seq. (Employment Service Complaint System) or, where applicable, common law remedies such as suit for breach of contract.

The grant of administrative enforcement authority without mention of private rights may be interpreted as an implicit preclusion of the latter. Any such implication should be eliminated by the terms of any legislation that is enacted.

XIII. LEGALIZATION

The American Bar Association urges "that those unlawful aliens who are now here be dealt with realistically and humanely and that those who are otherwise law-abiding be accorded a legal status." This policy relects the consensus of the three sections of the ABA significantly involved in immigration issues -- the Sections of International Law and Practice, Administrative Law, and Individual Rights and Responsibilities, and the ABA's House of Delegates, that legalization is in the national interest.

The ABA supports the concept of legalization embodied in the Simpson-Mazzoli bill. It does so because legalization is the only humane and practical response to the presence of an estimated 3-6 million undocumented aliens now in the country. Deportation of these persons is impractical and would rend our social fabric. Likewise, the continued presence of a large underground society is not in the national interest and bodes ill for our future. Undocumented aliens, because they are outside the protection of the law, are susceptible to exploitation. Often they are afraid to seek needed health services, education, or cooperate with local police authorities for fear of apprehension by the Immigration and Naturalization Service. Their continued unlawful status renders these persons the most vulnerable members of our society, and undermines our historic commitment to a free a pluralistic republic.

Many undocumented aliens have for years made substantial contributions to the U.S. economy and culture, including the payment of taxes without access to the concomitant benefits of the society. The substantial equities many have established has led the ABA to conclude that it is fair and reasonable to now accord them an opportunity to begin the process of becoming full-fledged members of the American polity.

In light of these considerations, ABA policy is carefully drafted to indicate its position that the legalization program should cover the maximum number of otherwise eligible undocumented persons now here, and that all those eligible should be accorded a single, and the same legal status. The ABA believes that the country should "wipe the slate clean," and that the cut-off date for eligibility should be as current as possible. Although the ABA has not taken a specific position on a cut-off date for eligibility, the use of the phrase "now here" in the resolution was deliberate. In order to maximize the opportunity for participation in the program, we think that a January 1982 cut-off date is the minimum which is in the national interest.

The ABA also believes that granting a single status to all eligible for legalization is both equitable and practical. Implementation of legalization will be an extraordinarily difficult undertaking. We have concluded that confusion and administrative problems will be minimized if one status is accorded, and therefore reject the two-tiered approach now embodied in Simpson/Mazzoli. We also think it would be unnecessarily costly to grant temporary resident status to a large proportion of those legalized, therefore creating the necessity of reprocessing them for permanent resident status in the future. Finally, we are concerned that the government not legitimize the "second class" image which undocumented aliens now bear through the statutory enactment of a temporary residence program. Therefore, whereas the ABA has no policy on what rights to public benefits or family reunification those legalized should be granted, we think it important that all be accorded permanent resident status leading to citizenship after five years.

The success or failure of legalization will turn on the proportion of those eligible who come forward and acquire legal status. The ABA had concluded that a current cut-off date and permanent residence status are both equitable and practical positions which will increase the chances of legalization being implemented successfully.

Senator SIMPSON. And, now, Dave Martin, please, to share your views.

STATEMENT OF DAVID A. MARTIN

Mr. MARTIN. Thank you, Mr. Chairman.

I also have a prepared statement. I would request that it be included in the record, and I will briefly summarize it here.

I would like to add my voice to those who have commended the subcommittee and its able staff, and indeed, the whole Senate, in its work on this issue over the last couple of years. I think great strides were made recently, and an important and a generally sound bill was passed last year. I also endorse your plan to proceed with prompt action this year so that we can maximize the chances for enactment of reform legislation.

The need still exists, as my colleague, Dr. Teitelbaum, has indicated, even though we do not have quite the same crisis headlines that we had a few years back.

ASYLUM ADJUDICATION

What I would like to do is to focus on the asylum provisions of the bill. These are the provisions that I am most familiar with, from my own experience in the State Department, and from the teaching and research that I have done since then.

The bill would make important changes in the asylum adjudication structure, and the basic provisions are quite sound. They change the difficult system we have now, which diffuses responsibility between the Immigration Service and the State Department, and instead they focus the responsibility for these very difficult factual decisions on a corps of expert immigration judges.

I think that making the State Department's role one of providing general advice about conditions in the applicant's home country is a good idea, and may eliminate some of the problems to which Mr. Carliner was referring earlier.

Moreover, the provision of the bill calling for a fresh start, calling for new adjudicators, who will fulfill this expert role in asylum adjudication, is also an important measure. Ultimately, judicial review cannot wholly make up for any problems that exist at that stage. Perhaps the most important element of a good asylum adjudication system is a professional corps of expert asylum adjudicators who can gradually build a track record that will overcome some of the distrust we have experienced over recent years. That distrust has had a lot to do with inducing some of the exaggerated court responses that we have seen.

JUDICIAL REVIEW

The judicial review provisions are more controversial than the basic decision to create an expert corps of asylum judges. And here we have competing concerns, of which the authors of the bill were very much aware.

Review by an article III court is, of course, desirable in most circumstances. An independent court of that kind can help to police against abuses and errors in the administrative system.

On the other hand, that kind of review takes time. It can be the source of great delays while it is underway, while there is an educational process going on, familiarizing courts who may not have been involved in that issue before. As a result, we can experience significant snarls in the administrative process.

Now, at first glance, the bill seems not to balance those competing considerations, but rather to come down completely on one side, by eliminating judicial review of asylum matters. It does provide that there shall be no judicial review of a final order respecting an application for asylum. But what is ostensibly taken away in that provision is largely given back, or given back in an important measure, in a later paragraph that carefully preserves "the right of habeas corpus under the Constitution."

I tried that phrase out on some of my colleagues on the law faculty, and we all agree that it is a remarkable stroke of boldness on the part of the Senate to employ that phrase, since scholars have been debating, for well over 100 years, the minimum content of habeas corpus that is required under the Constitution.

Fortunately, the report explains exactly what the committee means by that phrase, and we will not all have to repair to the law reviews.

What is intended is that procedural due process claims could still be heard. And there is a fairly generous understanding of what comes under the heading of procedural due process. Most challenges that have reached the courts to date have been of this type, and in that respect this phrase provides a very significant measure of judicial review. But that review is focused on individual cases after the administrative process has been fully pursued.

Now, I raised some questions in my statement about whether we really want, in every case, to use this mechanism of habeas corpus review to provide that limited scope of judicial review. I am especially concerned about deportation cases, where the individual potentially may appeal the underlying order of deportation separately, by a petition directly to the court of appeals.

But, in any event, I support the general role of the courts that is envisioned in the bill. I think it strikes a balance that is about right. The courts are not frozen out, and the fact that a court can be engaged to look at the case, even under a limited scope of review, provides an important deterrent against any possible abuses, and a check to correct any abuses that might occur.

But I also support the second element of the message that is implicit in the bill, and that is that the courts' role is specifically limited; the scope of review is narrow.

It is vitally important in this process to avoid delays. In that respect, last year's committee report admonishes, and I quote, "that the courts are not to prevent the commencement of the administrative process or interrupt or stay ongoing administrative determinations."

That is a very important admonition. Too often the greatest delays have not come from judicial review generally, but from the kind of judicial review that interrupts the asylum processing at an early stage. I would suggest that that admonition might be moved from the legislative history, to become a specific provision in the statutory text.

CLASS ACTIONS

I have gone ahead in my prepared statement to argue against a proposal for special provisions for class action review if an allegation is made of a pattern or practice of discrimination in asylum processing. I will not go into my full response there, but I think it would be a mistake to make a special provision along those lines, largely because it would be very easy to invoke that kind of review.

Asylum processing, even when it is working exactly right, is going to come up with results that look remarkably different from country to country, because you are talking about the practices of different home governments. Pattern-or-practice review therefore might be too easy to invoke, and I worry about the kinds of interruptions that would come of asylum processing while those class actions are underway.

The track record is really quite disturbing. Class actions have been a source of interlocutory interruptions to a major extent.

ADVICE OF ASYLUM RIGHTS

Very briefly, on another matter, there have been a couple of courts that have held that advice of asylum rights is required before someone is sent back to a home country. I believe that those court cases are mistaken, both in their understanding of minimum due process requirements and of the intent of the Congress in the Refugee Act. It is a difficult and subtle issue, but on balance I think the bill deals with this question very well by requiring some questioning, some inquiry by INS, without leading questions.

BOOTSTRAP REFUGEES

Finally, I would urge the Committee to resist proposals that have been advanced to change the definition of refugee, in order to eliminate the possibility of so-called bootstrap refugees being able to claim asylum. I think our vulnerability to bootstrap refugees is more apparent than real, given the healthy skepticism that has been employed both by courts and by the Board of Immigration Appeals, and indeed internationally, in dealing with those claims.

Thank you, Mr. Chairman.

[The prepared statement of David Martin follows:]

PREPARED STATEMENT OF PROF. DAVID A. MARTIN

Mr. Chairman, my name is David Martin, and I am on the faculty at the University of Virginia School of Law. There I teach both immigration and constitutional law, and I also cover international refugee law in a course on international human rights. From 1978 to 1980, I worked in the State Department on refugee and human rights matters, and I was deeply involved in the Department's work on the Refugee Act of 1980.

I appreciate the opportunity to appear before this Subcommittee once again, in connection with its important work to improve and reform our immigration laws. Great strides were made last year, and the Senate passed a generally sound and forward-looking bill. It was disappointing that the Ninety-Seventh Congress ended before the House could complete its action.

Today I will focus on the refugee and asylum provisions in the bill passed last year, and I am here primarily to suggest that the Senate hold the line against several proposed changes that have received fairly wide publicity--such as proposals for special class-action review of asylum processing. I will also recommend, however, some relatively minor changes in the provisions governing confidentiality and judicial review. And, above all, I wish to add my voice to those who endorse early Senate action. Recently we have been spared the crisis headlines that dominated consideration of immigration reform measures over the past two or three years. I hope that relative calm will not thwart passage of new legislation. The problems remain quite serious even if not acute, and we remain vulnerable to new crises. We need a new law that demonstrates seriousness and thoughtfulness about regaining control over immigration, a law that reforms asylum processing and also addresses the other aspects of the problem by means of employer sanctions and legalization. The bill the Senate passed last year would end a prolonged period of policy drift, and early passage of a similar measure by the Senate this spring doubtless will improve chances for prompt consideration in the House of Representatives.

Asylum Adjudication

The basic structure of the asylum adjudication provisions in the Senate bill is quite sound. The bill properly relies for fair and expeditious adjudication on a specialized corps of immigration judges who will become expert on asylum matters. Like all other immigration judges under the bill, they will be independent from the Immigration and Naturalization Service. Moreover, under the general supervision of the new U.S. Immigration Board, the immigration judges will retain control of their own resources and staffing, rather than relying on the district directors for such support. These simple measures will eliminate many of the causes of past delays, and should improve the reliability of the asylum adjudications. Equally important, these changes focus the responsibility for what will remain agonizingly difficult factual determinations. The State Department's role changes to a more appropriate function of giving general advice on conditions in foreign countries, thus eliminating any confusion over who actually makes the ultimate asylum decisions.

There should be no illusions about the difficulties these adjudicators will inherit. We may see a rocky transition, owing to the legacy of distrust left behind by the present system, a distrust felt both by advocates of various refugee groups and, on many occasions, by the courts. That feeling--deserved or not--has given great impetus to exaggerated court interventions in recent years. Overcoming that distrust, through the gradual, persistent development of a track record showing fair, professional, and unbiased adjudications of asylum claims, may be just as important as redesigned judicial review provisions if we are to eliminate debilitating court-imposed delays.

Confidentiality

Last year, at State Department urging, the Senate wisely provided in the new section 208(a)(3)(A) that asylum hearings will generally be closed to the public. That section goes on to mandate an open hearing if the applicant requests. It may not be good policy, however, to make opening quite so automatic upon the request of the applicant. There may be cases where an open hearing could conceivably cause risks to other persons besides the alien and his immediate family--risks insufficiently taken into account by the applicant in opting for the open hearing. I suggest that the Committee amend this provision to give the immigration judge discretion, in limited circumstances, to keep the hearing closed even in the face of a request by the alien. If it is important to create a strong presumption for open hearings whenever the alien requests, then the provision could so state, and perhaps further require specific findings on the record before the immigration judge denies a request for open proceedings.

Judicial Review

Judicial review remains a touchy issue. Many have blamed the courts, with some justification, for the delays in asylum processing that we have experienced over the last decade. Others place extensive reliance on judicial review to guard against abuses they believe INS has practiced. The bill ostensibly lines up with the former camp, for the new section 106(b)(1)(A) forbids judicial review of "a final order respecting an application for asylum." But much of what is taken away there is given back in the next paragraph, carefully preserving "habeas corpus under the Constitution."

I admire the Senate's boldness in using that phrase. Scholars are still hotly debating what the Constitution requires as the minimum content or effect of the habeas corpus remedy. Thankfully, however, the Committee Report (along with floor colloquy) spares us from repairing to the law reviews to understand that delphic phrase. As explained in the Committee Report, that provision plainly is meant to provide a significant measure of judicial review--enough, I would suggest, that it should satisfy those who believe judicial review essential to guard against abuses. As I understand the Committee's intent, any procedural due process claim can be heard in such habeas proceedings, although the courts are admonished to provide relief only if the defects are "fundamental and clearly prejudicial." Most court challenges to date have been of this character; very few litigants have asked the courts directly to reverse an asylum decision on the merits.

There are thus two important elements to the provisions for judicial review of asylum adjudications, and I support both parts of the message thus given to courts, litigants, and administrators. First, the Article III courts are to have some role in policing the system. This is essential. Any administrative officer absolutely shielded from court review on a decision as important as this would be subject to a variety of temptations to cut corners or let improper factors play a role in the decision. I am confident that most of the time those temptations would be resisted. But the mere fact that an Article III judge can be engaged to look over the administrator's decision--even if the scope of the judge's review is formally quite limited--furnishes an added inducement, a deterrent, to avoid any administrative derelictions.

But the other half of the bill's message is equally important. The court's role is decidedly limited and the scope of review is narrow. The court serves as a last line of defense against serious procedural defaults, but it must avoid being the source of unnecessary delays. The primary decisionmaker remains the expert immigration judge. Expeditious enforcement of final orders is essential, and this will not be possible unless the courts honor the limits on their role that the bill envisions. They are not to displace the expertise of the adjudicators on the merits, and relief should be provided only for "fundamental and clearly prejudicial" due process problems.

In this connection, the Committee cannot stress too strongly the report's admonition "that the courts not prevent the commencement of the administrative process or interrupt or stay ongoing administrative determinations." Indeed, I would recommend that such a provision be elevated from legislative history to become part of the legislation proper. It is exactly this kind of interlocutory interruption by the courts that has historically been the greatest source of delays in asylum processing. Such interruptions are not necessary. No real harm to the applicant is imminent until an exclusion or deportation order has become administratively final.

I would venture one further suggestion. As I understand the bill the Senate passed last year, the only avenue to judicial review of an asylum application is through "constitutional" habeas corpus proceedings, even for aliens who are being processed for deportation rather than exclusion. We therefore can expect to see a significant jump in habeas corpus petitions by deportable aliens--even those who are already pursuing through the courts of appeals the ordinary judicial review of the merits of the deportation order. This result is ironic, and perhaps should prompt reconsideration: a bill that makes great strides towards streamlining judicial review winds up making the review process more cumbersome for deportable aliens who lodge asylum claims.

The remedy might be to consolidate all judicial review--from deportation orders, exclusion orders, and asylum denials--in the courts of appeals. This can be done while still preserving the narrow scope of review of asylum determinations that the Senate bill means to establish: no review of the merits, and relief only for serious procedural defaults. Provisions setting the scope of review can function independently of provisions establishing the mechanism of review. Moreover, if this change is made, the bill could provide that any later habeas proceedings initiated by an alien in custody may not be used to relitigate any issue that was raised or reasonably could have been raised on direct review.

Class Actions

Some critics of the bill have accepted the notion that most judicial review of asylum determinations will be eliminated, but they have urged that explicit provision be made to authorize class-action law suits whenever there is an alleged pattern or practice of discrimination or of other constitutional violations by INS or the immigration judges.

Such a review provision would be a decided mistake, and I urge the Committee and the Senate to reject these proposals. Because asylum adjudication, by its very nature, is tied to judgments about the practices of the particular home government, the results are necessarily going to vary, sometimes quite dramatically, from country to country. This will happen even when adjudicators are doing precisely what they are supposed to do and applying the definition fairly and impartially. Nevertheless, the existence of such patterns will often make it easy for those who disagree with the adjudications to make out a prima facie case of discrimination. In most instances such prima facie cases will probably be rebutted, but the defendants will have to go through lengthy litigation to accomplish that rebuttal. Therefore, plaintiffs may find it relatively easy to get class actions of this kind off the ground--to get them past a motion for summary judgment--if the new legislation explicitly authorizes them.

In the meantime, what will happen to asylum processing of the affected class? The record is disturbing. In several instances, courts hearing similar class actions have entered sweeping orders stopping all processing dead in its tracks--not just actual physical return of the class members, but all processing--pending the distant conclusion of the class action litigation. In my view, while some interim relief might have been justified in those cases, the sweeping orders actually entered were not justified. Perhaps courts in the future will not be as amenable to overreaction, or perhaps courts of appeals will prove more ready to trim such overblown injunctions, particularly if the new adjudication system wins greater trust. But this history should give pause. Class actions have been the greatest single source of exaggerated interlocutory delays (although such delays were not inevitable even in those settings). The bill should not make special provision for a type of court involvement that seems especially open to this sort of overreaction.

I emphasize that courts should retain a role to protect against potential administrative abuses, including patterns or practices of discrimination, but I believe the existing judicial review provisions of the bill (with emphasis on individual review actions, but endorsing multiple-party habeas actions where appropriate) are adequate to cope with any such abuses. Given that avenue for judicial review of procedures, little is to be gained, and much may be lost in terms of delay, if there is a further special provision inviting class action challenges to asylum adjudication.

Advice of Asylum Rights

Two federal district courts have ruled that aliens must be advised of their rights to apply for asylum before they are removed from this country, either under a deportation order or as the result of a voluntary departure agreement. Those courts have relied both on a reading of congressional intent embodied in the Refugee Act of 1980 and on an assessment of constitutional due process requirements. I think the courts are wrong on both counts.

Due process does not invariably require detailed advice of the whole range of individuals' rights before the government acts in a way that later appears to be adverse to their interests, except in certain limited circumstances closely tied to the integrity of criminal trials. (This exception accounts for the well-known Miranda warnings, advising of the Fifth Amendment right to remain silent in police custody.) For example, the Supreme Court held in Schneckloth v. Bustamonte, 412 U.S. 218 (1973), that police officers need not give explicit advice of an individual's right to deny permission for a search before undertaking such a search with the person's consent. Surely the Fourth Amendment's protection against government searches and seizures--protection enshrined in the Bill of Rights--is as significant as the statutory right to apply for political asylum. Yet in the former situation the Constitution contemplates that people ordinarily must invoke that protection on their own initiative if it is to be taken into account. There is no absolute, automatic requirement of advance warnings. In my view, due process requires no more with respect to asylum applications.

Similarly, I believe the court decisions requiring blanket advance warnings misunderstood Congress's intentions in passing the Refugee Act. Although that Act strengthened the asylum provisions in important ways, asylum is still to be viewed as an extraordinary form of relief for those who can prove that they are likely to be targeted for persecution and who take steps to make that risk known to the Immigration Service. Obviously this does not mean that they have to be well schooled in the intricacies of our immigration law nor that they have to cite the precise sections of the statutes that give them this protection. But it is not unreasonable to expect a person who believes himself a likely target for persecution upon return to his home country to manifest that fear in some fashion on his own initiative. Asylum, in other words, remains an extraordinary protection to be invoked by the alien, not a right presumed applicable unless expressly waived after extensive advice of rights by immigration officials.

This stand against advance warnings of asylum rights may seem harsh. One can ask, "What do we lose if we advise the alien fully of the law and then proceed to flesh out and adjudicate any possible claims he may have?" It is a fair question. But the reasons for resisting a blanket warning requirement derive from the inherent nature of the difficult asylum adjudication process. Once asylum applications are filed, it is very hard to weed out frivolous or ill-founded claims without going through the whole painstaking adjudication process, at least if the person comes from a country with any significant level of human rights abuses. We simply have no second line of defense reasonably available to assure that ill-founded applications do not consume large quantities of available asylum adjudication resources. Thus the risk of overburdening the system is significant if all aliens are, in effect, invited to apply for asylum. On the other hand, an alien's lack of initiative to express significant apprehension about return provides a relatively good indication that he or she has no substantial claim to asylum. Those people who are really meant to be protected by the asylum provisions generally are those so likely to face a threat that we can expect them to resist return in some way.

Plainly, we must be concerned that even shy and unschooled people with legitimate fears of persecution can have their claims heard--yet without overwhelming the system with ill-founded claims. I believe the current bill carefully balances these competing concerns. It mandates some INS inquiry into an alien's reasons for entry or attempted entry into the United States before summary exclusion, but the legislative history makes clear that leading questions and explicit references to political asylum are not to be employed at this stage. Only if the alien, under this general questioning initiated by INS, then expresses some fear of return, however inarticulate, is the asylum application process to be initiated. Of course, continuing congressional oversight will be helpful to make sure that the agents doing this preliminary questioning remain responsive to any significant expression of fear about return, but the basic system is well-designed.

Bootstrap Refugees

A different criticism of the fundamental asylum standard has come from other parts of the political spectrum. The established definition of "refugee" gives protection to persons who are outside their home countries and now seek to avoid return because of a "well-founded fear of persecution." Thus the definition potentially allows aliens who had no problem with the authorities before their departure to claim asylum based on their later statements and activities, or on later developments in the home country, which, they assert, have caused the government to take an interest in them and have subjected them to a risk of persecution if they return. In other words, the definition does not require that the claimant left the home country because of a fear of persecution but only that he or she is now unwilling to return because of such fear.

This feature of the definition, I agree, prompts legitimate concern about abuse of the system by those who hope to become "bootstrap" refugees. A bill introduced by Senator Huddleston in the last Congress (S. 776) would eliminate all risk of such abuses by changing the definition to require, essentially, that a well-founded fear of persection have existed before departure and to provide that asylum cannot rest on subsequent developments.

I urge the Committee to resist any such proposed change in the definition. Not only would implementation of that proposal put us in violation of our treaty obligations under the UN Protocol relating to the Status of Refugees, but it would also leave us unable to respond to a few legitimate situations where most of us would probably agree that asylum protection should be provided. For example, if a coup creates sudden jeopardy for travellers overseas who had had no difficulty at the time of departure, we should not close our ears to their pleas. Or, to take a perhaps more difficult example, consider the case of a foreign student in this country who indulges here in the freedoms we enjoy under the First Amendment. As a result, assume that she awakens for the first time to the human rights violations committed by the regime at home, and then takes the initiative to speak out about those violations, as a genuine expression of her views and not as a ploy meant to change her immigration status. We should not absolutely preclude asylum if the home government responds with a clear and direct threat of persecution upon return.

In my view, potential bootstrap abuses of the current refugee definition can be prevented by careful administration under the present definition. Although that definition leaves us theoretically vulnerable to blatant bootstrapping, in practice it has been applied, both here and internationally, with wisdom and a healthy skepticism directed towards bootstrap claimants. We should continue to rely on the common sense of the adjudicators to assure that such claims prevail only in rare circumstances, but without rigid statutory changes that would slam the door in the face of those who might legitimately fear persecution based on developments that occurred after departure from the home country.

I hope these suggestions will prove useful. I will be happy to respond to any questions you may have.

Senator SIMPSON. Thank you very much. Very helpful, as always, David.

You have given me a new term, interlocutory interruptions. I had a new name for that, I will share it with you after.

I have heard you at the University of Virginia, and you have testified here, and on panels, and you say a great deal, and you have been very thoughtful on it, and let me tell you, that is what you appreciate in this business.

So, I have some questions for Michael Teitelbaum.

What would be the effect in our attempts to achieve immigration reform of deleting any one aspect of the proposed program, the deletion of employer sanctions, or a system of worker verification, or of legalization? Where do we go if we delete one of those?

Dr. TEITELBAUM. Mr. Chairman, Father Hesburgh spoke eloquently to that point this morning. I would simply associate myself with what he said, and add that unless someone can suggest an alternative, an effective alternative, to employer sanctions and some form of improved identifier, I think they are essential components of the package.

I would add, though, that employer sanctions are no panacea, and anyone who thinks that effective enforcement will result from simply passing the bill would do well to read the GAO report to which Mr. Carliner referred. As I understood the report, it found that employer sanctions in several countries, including France and Germany in particular, had not been as effective as desired for various reasons: Inadequate enforcement effort, lack of communication between government agencies, and a skepticism on the part of the courts about imposing substantial fines, and so on.

The take home lesson, though, is to look at what both of those countries have done on the basis of such concerns: Following their assessment of that they have greatly strengthened their enforcement of employer sanctions. They have not scrapped them, and I think that is evidence that they see them as the only feasible alternative.

Senator SIMPSON. You have just illuminated a very interesting point. Those who use the argument of the GAO report, have usually, it seems to me, read the overview of 5 pages, and skipped the 70 pages, because the 70 pages then talk about the Canadian experience, and the fact that there they were enforcing all of the laws, not just immigration sanctions, and that they viewed their job primarily as one of education.

Recently now, they are beginning to make it an enforcement priority. That is a lot different.

In France, the judges who have not taken the law seriously and have treated it very lightly, the penalties were just simply a cost of doing business. That now has gone into effect, a new law has gone into effect, which is severely strengthened, and the GAO mentioned that that had gone into effect, but they had not waived the possibilities of what occurred there and in West Germany, they finally uncovered the phenomenon of leasing workers.

The GAO found that a great problem, and that was addressed in a new law, again which they did not choose to discuss the impact of.

So, I commend people back to the GAO report for the full reading of the 70 pages, and more importantly, what Germany, France, and Canada are doing about employer sanctions. And, indeed, using them and making them meaningful.

Dr. TEITELBAUM. It is, Mr. Chairman, why I said that this committee will have to exercise active oversight over the INS and the enforcement of those provisions over the coming years.

Simple passage of this legislation will not solve these issues.

Senator SIMPSON. I agree, totally. In fact, the impact of this legislation, if it were to pass in its purest form, might not bend things 20 percent in this country. Anybody who believes differently is lost in the swamp, including your chairman.

So, I do believe very much that it is a continuing oversight, especially in the area of discrimination and employer sanctions, penalties, whether it really is a burden on the employer, all those things are a part of it. This is not the end all of legislation, this is a tiny shred of a skeleton that we hope to put some flesh on in the years to come, to see what we are going to do about controlling our borders, nothing more.

I will ask you this. Is there a fallacy behind the assertion of some, that the answer—and you touched on it—the answer to our domestic illegal immigration problem lies simply with increased border and labor law enforcement, coupled with massive foreign assistance to sending nations?

I would like you to develop your thoughts just briefly, a little more on that.

Dr. TEITELBAUM. Well, as I said, I support American foreign assistance, fair trade laws, and fair foreign investment laws that will generate employment in the sending countries, and in many poor countries that are not sending countries, too. Immigration is not the only rationale for that kind of internationalist approach to the world.

But I am unhappy to report that I have little confidence that, even if the U.S. Congress agreed with me—which it does not—on foreign assistance, that such measures would have very much effect in the short term on outmigration pressures.

In the long term, however, I believe that the only solution to these kinds of pressures is the economic and social development of sending countries adequate to provide employment, and a decent way of life for their populations and labor forces. Once again, I commend you to the International Labor Organization's astonishing projections—that I included in my written testimony—of labor force growth in the developing world over the next 20 years.

Senator SIMPSON. I understand that you did travel to Mexico last year on a study mission to review those immigration and migration issues.

Obviously, that country is faced with a serious and dramatic economic and population problem.

Could you share just very briefly with the committee, subcommittee, some of your principal findings with regard to the push factors which stimulate migration.

Dr. TEITELBAUM. It should first be said that Mexico is one of the success stories of the developing world. In fact, it has, until recently, been described as the success story in terms of continuous high levels of economic growth.

It is having some problems now, as is obvious to anyone who reads the front page of any newspaper, and a lot of those problems have to do with overly optimistic expectations about the price of oil well into the future and a mortgaging of the future of those prices.

To enumerate the push factors you spoke about, you must begin by looking at the unemployment and underemployment rates in Mexico which are orders of magnitude higher than those even in the greatly recessed U.S economy. The conventional estimates are that if you figure a full-term equivalent unemployment rate—a composite of frank unemployment and partial underemployment—one gets up to 30 to 50 percent full-time equivalent unemployment rate. The stimulus to emigrate becomes even greater in view of the prevailing relative wage levels. Until recently prevailing wages were 5 to 10 times as high in the United States for similar jobs, as those right across the border. In addition, consider what has happened to the peso in the last year. In January 1982, the peso rate to the dollar was 24. When I visited Mexico in July it was 49 and everyone was saying there is going to be another devaluation and I said how could there be, you just devalued by 100 percent? And they were right and I was wrong, for the peso today is about 150 to the dollar.

So, we have gone from 24 pesos to the dollar to 150 to the dollar in 14 months. Wages have gone up, but not as much, obviously. And therefore, the differential of wages between the United States and Mexico has increased from somewhere between 5 to 10 to 1, surely to an excess of 10 to 1, and probably 15 to 1.

If I were a Mexican national, unemployed or underemployed, looking at what I could earn in the identical job by just getting across that border, in all honesty, I would do it, and I sympathize with those who do.

Senator SIMPSON. Even if you were employed?

Dr. TEITELBAUM. Even if I were employed the wage differentials are highly attractive.

Senator SIMPSON. Just one quick, final question—if you could give me a swift response and then, what if we do nothing with this legislation or any legislation, what do you foresee?

Dr. TEITELBAUM. Again, I would associate myself with the concerns of Father Hesburgh this morning. I think that the issue I alluded to earlier is the sleeper—the issue of whether the courts will rule that illegal aliens have a constitutional right to congressional representation and to vote for representatives. This is an issue that is in a sense still before the courts. They have not ruled upon it. They have simply said that the plaintiffs do not have standing to sue. It goes right back to the Great Compromise of 1787. We are talking about the very fundamentals of the American Constitution here.

Very quickly, let me tell you what happened. The Census Bureau, under pressure from the Carter White House and from ethnic activists, undertook a special set of efforts to count as many illegal aliens as possible in the 1980 census. This led to a suit alleging that legal residents of States with few illegal aliens would therefore be deprived of their congressional representation. This went to court. The Carter administration defended its actions by arguing that the Constitution grants representation to persons. You remember I said earlier that persons is a relevant term here.

Senator SIMPSON. I did not know why you said that but now I do know.

Dr. TEITELBAUM. The administration argued that all persons, whether legally here or not, were entitled to congressional representation. It failed to note that many persons, or human beings anyway, are routinely excluded from Census counts.

For example, millions of visitors present on census day are excluded from the Census count, diplomats are excluded, and so on.

The Justice Department further claimed that "nothing in the Constitution forbids a State from permitting even illegal aliens from voting for representatives" and I submit to you that that is a very interesting constitutional issue with enormous ramifications, one of great interest to constitutional lawyers. I defer to being surrounded by three lawyers, but it strikes me as a very important issue that could crop up in the next few years.

Senator SIMPSON. Thank you.

Now, Dave, I have a few questions for you.

It is very difficult, really, to respond to your 27-page statement, which was only handed to us just as you came to the witness table. That makes it very difficult to function.

Mr. CARLINER. I apologize for that, Mr. Chairman. It was not deliberate.

Senator SIMPSON. I used to pay my dues to the American Bar and I thought they moved in other than monolithic majesty and I really would appreciate later having that information because it is a serious statement—because you break from previous precedent and it is just not helpful at all. I am not dropping that on you but I will sure drop it on them. It is a poor way to do business.

So, it is difficult to respond, but a swift cursory reading of it indicates that the ABA now opposes sanctions and supports a generous legalization. Now, that is fascinating.

You suggest enforcement of the wage and hour law and increases in foreign aid. That is surprising to me because I have dealt with you and talked with you many times. Every single study has shown that most apprehended illegal aliens are making more than the minimum wage and an expert at your table, and today and throughout the whole month of testimony, has reiterated every single responsible study, has shown that development in the sending country is a long-term solution at best and sometimes an excuse and may, even as we heard today, increase illegal migration in the short run.

So, that is disturbing to me and I gather that you must have been very active down there in New Orleans. I wish I could have been there to present the other side. I really regret that. I enjoy you, we have had spirited debates, but I really have trouble with this. Maybe I am just a bonehead from the bowwows, but let me tell you what I think you have done with the American Bar Association, and see if I may not be right. But I am a member, or have been—I have not practiced anyway since I came to this place.

Employer sanctions originated in the U.S. House of Representatives—it is the very keystone of any kind of immigration reform period. It has passed that body twice under the sponsorship of none other than the fine chairman of the Judiciary Committee of the U.S. House of Representatives, who sent it here twice only to have it defeated, but they deeply believe that nothing can take place without employer sanctions. And then here in the Senate in August we saw that the amendment to remove employer sanctions failed by a vote of 85 to 14, the most significant defeat of any amendment that we dealt with during the debate. And it is very difficult, and I ask you this sincerely as a lawyer, not as a legislator, how you led our brothers and sisters of the American Bar into that maw with the full knowledge of the basic political facts of the issue? Could you explain that to me, please?

Mr. CARLINER. First of all, Mr. Chairman, you do me too much credit to attribute to me the change of policy within the American Bar Association. Before this got to the house of delegates, it was acted upon by the board of governors of the American Bar Association. That is a rather select body within the American Bar. It represents not as diverse a group of people obviously as the U.S. Congress, but it represents a rather diverse group of lawyers of the United States. In terms of their political affiliations, without having polled them, I suspect that the largest number of them belong to the same political party that you do, Mr. Chairman. I think that the——

Senator SIMPSON. Well, this—I do not believe partisanship has ever entered this issue—as I recall it anywhere.

Mr. CARLINER. No, it is not in terms of a partisan issue, and I was not trying to impute partisanship, but I was trying to allude to the economic attitudes of such people. I heard the debate there by the house of delegates from people who are farmers from Nebraska, people who are from Florida, people from Texas. One of the major issues they raised was the—and you have heard this from the chamber of commerce, unfairness of imposing upon an employer the duty of trying to enforce immigration laws.

One of the other issues they raised was the fact that if people are employed in the United States, it is because there is a need for them. There has been an ongoing controversy as to which I am not sanguine enough to give you a positive answer as to whether the aliens who are taking jobs are taking jobs from people or whether they are fulfilling an unmet need.

There was the view, which was not by any means a predominant view within the American Bar Association but one which we have heard from the ethnic organizations, that employer sanctions will result in discriminatory treatment of people who look foreign. So although you may not have read the statement before, Mr. Chairman, I know that you have heard all the arguments dozens of times, I'm sure, to the point of nauseum, since you have been on the Select Commission and have been here presiding at these committee meetings before.

Why they changed their minds, I do not know, Mr. Chairman. All I can say is that it was fully debated within the American Bar Association and there was an overwhelming vote against the sanction proposal.

Let me say with regard to the issue as you referred to it previously, I read all 70 pages of the GAO report and in my limited time I could not dwell on it at length. All I would say it is true enough that these other countries have strengthened these sanctions, but it has not yet proved that they will be effective even in this respect. With a celebrated demographer sitting on my right, I hestitate to intrude into his field but I think one can note that people have been migrating ever since the Garden of Eden. Ever since the formation of national states, there may have been an attempt, a desire on the part of each national state, to keep people out whom they do not want in. I am not a scholarly historian, but as I look at nations around the world today, I think there is only one country to which people are not flowing. That is the Soviet Union, and they have other reasons for not flowing into that country.

People have moved from country to country in order to feed on greener pastures. I do not believe that imposition of laws, even with all these other educational mechanisms. They may contribute to something but they are not going to solve the problem and all I would say is that considering the price one pays in adopting sanctions as against the likelihood of a solution, from where we sit the price is too great; from where you sit in terms of legalization the price may be right and I do not question your judgment on that. If I were a legislator, choosing between legalization and sanctions, I might very well vote the way you do but I do not have that privilege. All I can do as an advocate is to reiterate once again the doubt that we have that employer sanctions are worth that price.

Senator SIMPSON. You are an able advocate, there is no question about that. All I am saying, and I still have not received a response, so I will just move on—that is that lawyers that I knew used to be pretty smart politically and I am just kind of laying out to you, you know, what has happened around this joint for the last 10 years based upon rollcall votes. It is certainly a curious kind of an experience to see that there is a political reality, it may all collapse in the next few weeks or months, but I always believed that lawyers paid attention kind of to the things like that. I believe that someone did them a disservice when they deal with the Judiciary Committee of the House and the Senate who have backed employer sanctions almost unanimously—and those are their brothers and sisters that have done that.

Mr. CARLINER. Well, Mr. Chairman, I have a feeling that the house of delegates of the American Bar Association believes that it is functioning like a dry run of the U.S. Congress, but their political judgments, I guess, are based on other considerations than yours.

All I can say is that in my observation of them, they have a higher proportion of lawyers necessarily than does the U.S. Congress, but I doubt if they have a lower proportion of people who think they are skillful in the art of political compromise, but their compromise is with other house of delegates members rather than with other Members of Congress.

Senator SIMPSON. If you could help me bring them down from their Olympian heights and tell us what they would like to do if they do not like what has been proposed throughout the country throughout the last 8 years—why tell them to drop by. I would like that as an alternative.

Then, let me tell you. I guess obviously you see things here coming out of me for the greatest disappointment that I have had in this entire 4 years—the entire venture—has been from fellow lawyers. Ron Mazzoli and I spoke to the American immigration lawyers, San Antonio, and other lawyers. I have never seen a more self-serving, tunnel visioned, myopic society in any group that I have dealt with on this issue.

That is my profession. I can tell you I wonder if we will break loose from the plain old greed in the interest of the Bar, the desires of lawyers to continue to confuse in the name of the status quo—where their role is very dominant and very successful and I wonder what part that played. Then in my off hours I have read the INA—Immigration and Nationality Act—and see the magnificent patchwork of laws woven, I do not know by what, perhaps some greed and some gain, under the guise of service to fellow man. Their actions are pretty hollow and that comes from one who loves the profession and I think you could find out that my colleague in the House might share those views as we have dealt with every single constituent group in the United States and his disappointment would match mine. That is my hunch.

Mr. CARLINER. Well, I regret your characterization of the lawyers and I am not able to distinguish—I am not here for the Immigration Lawyers Association—I belong to it. We have as many varieties of lawyers as there are varieties of other people.

I must say from my own observation of those in the immigration field, that I would not characterize them in the words that you have. I think that as a group of individuals, they have served well; they have provided pro bono services to aliens who have no money at all for the sake of trying to improve the immigration law and the interpretation of it. The objections which the American Bar Association has made, and so far as I am aware, which the immigration lawyers have made to various changes in the statute, I must say do not arise, as far as I can tell at least, from my own personal experience, from greed, from the notion of earning any more money out of clients. The asylum cases, for example, are cases which are largely handled without fee and the cases which Mr. Martin has lamented. I think that he is placing the blame at the wrong door. The only reason the courts have intervened there is that the Immigration and Naturalization Service behaved in an egregiously irresponsible way in dealing with the claims of the Haitians. The intervention came about because of the hasty method denying due process to Haitian clients, Haitian aliens, something that was corrected by District court and affirmed by the court of appeals.

In your statement you are not indicting those courts and perhaps those lawyers but the major litigation has been litigation undertaken for no profit at all, for a pro bono humanatarian cause.

Senator SIMPSON. I think that there is a great deal of that in that area but there is not that stimulating motive when we are talking about changing section J2d or some such in the INA, or whether that enables a person to receive a fee to get that person over here. And you know that is part of what I am talking about, not necessarily these other things.

I would just hope that having served in the American Bar for 20 years nearly, that they would join us in the common endeavor to try to find a way to meet the first duty of a sovereign nation which is control over our borders.

Mr. CARLINER. Well, we are glad to join you in that, Mr. Chairman. I do not know what the solutions are, but we are going to work with you in that.

Senator SIMPSON. Let me advise you that the lawyers in the *King* case—in that great endeavor—have applied for $500,000 in attorney fees and I think that that is something that should be recognized by citizens.

Mr. CARLINER. Well, when they brought that lawsuit, Mr. Chairman, the Equal Access to Justice Act had not been enacted and I do not think they undertook this litigation with the expectation of getting large fees. The attorneys were retained by the National Council of Churches and I think one of them was on a salary from them, but the Haitians involved were penniless people and I think I could say without any question whatever, that the lawyers there were not motivated by the expectation of a large fee.

One of the attorneys works for a legal services group in California, as I say this, it is my understanding, and I would like to—I will verify this and put it in writing, Mr. Chairman, that those fees will not go personally to the lawyers. The fees will go to, in one instance, the Lawyers Committee for Civil Rights Under Law and, the other instance to a legal aid organization in California. I believe once this is established, you would no longer say that they're motivated by profits, greed, or by profits.

Senator SIMPSON. Well, someone said earlier today that we could solve another problem if we put up $2,500 per case.

I have represented more bums, screwballs, unfortunates and down trodden—free of charge than any man in this room, so I know what the issue is and if we are really talking about pro bono, let us talk about pro bono. If we are talking about using archaic systems of law to make jack, then let us talk about that. I think that is the issue.

I have some questions of our good colleague from the University of Virginia that I might ask, and I will give you rebuttal later, Dave.

How are we to assure that INS adjudication processes are not used merely for gain and delay, which I just referred to. Should we limit appeals generally those raising a substantial question? Where are we headed in that thicket where we find 4,000 petitions for asylum in 1979 and now we have 130,000 petitions for asylum?

Mr. MARTIN. The main solution to that problem is going to be the ultimate creation of a system that reaches final orders that can be enforced. That will be a slow process until we have a demonstrated record of people filing asylum claims, having them expeditiously found to be without merit, and then seeing those people returned, we are likely to see—until that point, we are likely to see continued expansion of the applications.

The basic system that is set out in the bill puts us on the road toward such a solution. I do not think that an answer is going to be found in some preliminary screening to decide whether the question raised on appeal is substantial or not. It makes sense to have one layer of an administrative appeal, as the bill provides, and then to have very limited access to the courts. Once the courts become familiar with a system that functions well, I think we will see much less of an ambition for judicial review, and consequently fewer delays before nonmeritorious applicants are sent home.

Senator SIMPSON. As we go into this continuing anguish of the difference between an economic migrant and a refugee, and that will become more and more of an issue over the decade, and the courts' role having in some cases discounted State Department findings of persecution or nonpersecution, on the grounds that foreign policy considerations may have been in the State Department, legal adviser's office and by those who have not had experience with adjudication processes or did or did not.

How can we insure a fairness of individual determinations while still employing State Department expertise on a case-by-case basis which our bill calls for in human rights situations and in resource countries? Just a quick review of that for me because I know you followed that.

Mr. MARTIN. The main solution there is to focus the responsibility on the particular adjudicator who sees the witnesses, hears the applicant's story and makes a decision.

Now certainly it is important to obtain information about what is going on in the foreign country, whether that comes from the State Department report or the other sources that are introduced, but in most of these cases, in my experience, the ultimate decision to grant or deny asylum turns on the individual applicant's own story. You need to make an assessment: is that person telling the truth? If he is telling the truth, do the events that he is talking about really indicate that that government is still interested in him and likely to persecute him? That is a very tough decision; these adjudicators are going to have a tough job. But that adjudicator is the person who has got to make the key determination—the individual who hears the witnesses, who can pose questions and test the story.

I think that is the main way, using as background information what is obtained from the State Department or other sources that the individual can provide.

Senator SIMPSON. Is it your view, even though it is terribly time consuming, that the individual face-to-face interview with the current State Department information on an updated basis is still the way to go?

Mr. Martin. The current system, I do not think is the way to go. I do not think that the——

Senator Simpson. No, not the current system, but the one that I just described, where a case-by-case, face-to-face State Department participation up to date, is the way to go.

Mr. Martin. No, I would not favor that. It might depend on the details.

I think the State Department's role in most cases will appropriately be to provide general information about conditions in the home country, and then a specific adjudicator probably in the Justice Department, should decide about that individual case.

Senator Simpson. Well, now Dave let me assure you that the load I just dropped does not have anything to do with Dave Carliner, who I have come to know and respect, and I mean that. And you and I talked about some of these things face to face but it just seems to me that there comes a time that I, as an attorney—it is just tough to see those responses as to what I see in my profession that I deeply love and it does not have anything to do with you. You are a tremendous guy and I enjoy you. So I will leave it at that.

Mr. Carliner. I appreciate your compliments, Mr. Chairman, but I would like leave, if I may——

Senator Simpson. I will let you do that. I said I would, did I not?

Mr. Carliner. If I could have a moment with regard to what I believe is a very important issue which troubles you, Mr. Chairman.

Senator Simpson. Can you do that in a couple of minutes, please?

Mr. Carliner. Yes, I can. It has to do with the asylum adjudication that Mr. Martin was referring to.

If it isn't done on a case-by-case basis before individual asylum officers, as it necessarily has to be, it is going to be time consuming.

The notion of saving time by eliminating, what Mr. Martin and what the bill calls judicial review, I think is a false hope because the Constitution provides that a person has the right to file a petition for a writ of habeas corpus and no act of Congress can change this. It is a constitutional entitlement that the people of the United States have.

You can file a petition for a writ of habeas corpus, the court will take time, the district court, to review legal questions and the arbitrary exercise of discretion. That is the historic and constitutional duty of the courts. To eliminate factual determinations from that review is not going to save the time of the district court. If the district court denies the petition, the applicant has the right to appeal to the court of appeals, which takes time. If the court of appeals denies the case, you can petition for certiorari in the Supreme Court. So time saving is not saved, is not achieved by reducing the scope of review.

And with regard to the wisdom of the decisions of the administrative officers, all I can say is, as I said before, they are no wiser than any other administrative fact finders. The number of cases which have raised this issue, one can count on the fingers of two hands. There are about 10 cases. Basically there are three or four cases in all the litigation on this issue which have created problems for the Government and the responsibility for that, I reiterate again, does not lie on the lawyers—who were not being paid for it. It does not lie on the aliens. It lies on mistaken policies adopted by the Immigration and Naturalization Service and they could be cured by improving their procedures as your bill, in fact, does seek to do.

Senator SIMPSON. Well, I will tell you, Dave, you are going to be overboard when I throw in the complete revision of the INA—in English.

Mr. CARLINER. I wish you would.

Senator SIMPSON. Yes. We have not heard nothing yet when we see that one observed and pursued.

Thank you very much.

Mr. CARLINER. Thank you, sir.

Senator SIMPSON. The final panel of the afternoon, Roger Conner, executive director of FAIR; Carole Baker, executive director of ZPG, Zero Population Growth; John Shattuck, the director of the American Civil Liberties Union, with his colleague, Wade Henderson, legislative counsel, and; Newton Cattell, executive director for Federal relations of the Association of American Universities.

Well, the final panel of the day, and we appreciate your patience, and looking forward to hearing what you have to share with us on the issue.

We will just proceed in the order on the agenda; therefore, Roger Connor, please.

STATEMENT OF ROGER CONNER, EXECUTIVE DIRECTOR, FEDERATION FOR AMERICAN IMMIGRATION REFORM; CAROLE L. BAKER, EXECUTIVE DIRECTOR, ZERO POPULATION GROWTH; JOHN SHATTUCK, DIRECTOR, AMERICAN CIVIL LIBERTIES UNION, ACCOMPANIED BY WADE HENDERSON, LEGISLATIVE COUNSEL; NEWTON CATTELL, EXECUTIVE DIRECTOR FOR FEDERAL RELATIONS, ASSOCIATION OF AMERICAN UNIVERSITIES

Mr. CONNER. Mr. Chairman and members of the subcommittee, my name is Roger Conner and I am the director of the Federation for American Immigration Reform, which is better known as FAIR, and is the organization which conducts the largest program of research and public information on immigration in the United States.

I wanted to thank you for the opportunity to testify on S. 529. We were privileged to testify on last year's bill and I must say that we feel a much greater sense of urgency today than we did then.

You might ask why we feel this way inasmuch as the bill did pass the Senate 80 to 19.

Perhaps a way to capsulize the reason for our feeling is what James Russell Lowell observed when he admonished that: "Truly there is a tide in the affairs of men, that there is no gulf stream setting forever in one direction." And as you have seen today, the opponents of immigration reform are getting better organized and they have learned from the last time through.

We also feel a sense of urgency because there are over 11 million Americans out of work and this is the most significant jobs bill that will come up before this Congress. Why do we say this is the most significant jobs bill to come up before this Congress? Many illegals leave their jobs to return home every day. And the INS routinely apprehends 100,000 illegals who are working with the United States every year.

If employer sanctions is effectively enforced, employers will be forced to find and hire Americans for these jobs, thus opening thousands of new jobs for Americans. Even more important than the jobs now held by illegals, as many illegals may be allowed to remain by the amnesty provision, is what will happen as the economy recovers from its current recession.

Without employer sanctions, the economic recovery over the next decade will bypass many Americans because more employers every day are learning how to recruit and find illegal aliens. Employers are learning that the illegals are better, that is, cheaper workers than American workers. Without sanctions, these employers would just hire more illegals as the jobs open up. Thus some unemployed American workers will lose their personal chance at economic recovery and many more Americans who do find work will find their incomes lowered as the law of supply and demand adjusts the price of labor downward in the face of surging supply.

More employers are learning every day how to find and hire illegal aliens. For example, a team of journalists with the Dallas Morning News interviewed and examined carefully the 15 largest construction companies in Dallas in December. They found that 10 of the 15 used illegal immigrants because they can pay them less—the combined business of these companies is over $1 billion a year.

It would be folly to assume that other employers are not learning from the experience of their competitors and their friends about how to find illegals. A recent survey of local leaders backed up the point. Seventy-two percent of local labor leaders surveyed all around the country reported that illegals were taking jobs from Americans in their communities and 94 percent found that wages had been lowered by the presence of illegals.

Economic recovery, whenever and however it comes, without employer sanctions, will mean no recovery at all for many American workers, especially in the semiskilled or unskilled jobs in most direct competition with illegal immigrants.

With that point behind me, let me mention four specific concerns on provisions of S. 529 mentioned in my testimony.

First is the amnesty. The amnesty in the bill must be reexamined. We have obtained documents that were distributed to local offices of the INS throughout the country by the INS central office. These documents describe how the agency was planning to interpret and implement the amnesty now written in the bill.

Under the plan for implementation there will be, and I quote, "a minimum amount of screening of continuous residents." And to quote again, "The major emphasis of the program must be on according amnesty to as large a number of eligible applicants as possible as this is first and foremost a benefit problem."

In our view, this approach would make a mockery of the committee's intent to limit amnesty to those who became contributing members of our community. It does not take much imagination to see how easy the process will be to manipulate and how thoroughly the process will be discredited in the minds of the American people, which will benefit no one.

The second point to emphasize, the committee should stand firm on its modest reform of legal immigration. The ceiling is not as inclusive as we would prefer, but it is essential. Without the ceiling and the elimination of fifth preference, the level of legal immigration will grow like topsy.

Such a result would be fundamentally undemocratic. The level of legal immigration will determine the future size of our population. Congress should set it and review it.

Third, you are going to be attacked for removing much of the fifth preference and I would like to make a comment about that. This change has been attacked in the name of family reunification. The truth is that the admission of a sibling, particularly a married sibling, tears apart more families than it unifies. Family members in the United States gain a member and the family members in the source countries lose one, but what the fifth preference really does is not reunify families; it sets up chain migration. It results in more admissions in the countries from which fifth preference immigrants or fifth preference advocates hail and fewer admissions from other countries.

There is nothing wrong in this, but the family reunification for fifth preference should be seen for what it is, a bit of rhetoric wrapped around good old fashioned American politics—known as self-interest.

The fourth and last suggestion I have for the subcommittee is that the employer sanctions section of the bill should include a provision for a private right of action against an employer who refuses to comply with the prohibition against hiring illegal immigrants. No employer should get a competitive advantage by refusing to comply with the law; other businessmen should be able to insure the compliance of their competitors.

We need an immigration policy that works, one that is enforced and, I hope you will not yield to the pressures to take away the attempt to streamline and take away part of the obstacle course that currently prevents our immigration laws from being carried out. It would be a tragedy if all the effort that went into this bill came to naught because a new law came into force.

I believe the various groups, particularly the immigration lawyers that are benefiting mightily from these provisions today, are going to target these points. The public and the editorial writers don't understand these details the way they do the broader issues like sanctions. It is extremely important, in our view, to defend these provisions of the bill if the law is to be enforceable and effective.

We really do believe that effective immigration reform legislation can be passed this year. Maybe that makes me an optimist, but if I am an optimist, it is only in the sense once described by Oscar Wilde when he said, "The basis of all optimism is sheer terror."

Senator SIMPSON. You are going to end on that note? [Laughter.] All right. Thank you, Roger.

[The prepared statement of Roger Conner follows:]

PREPARED STATEMENT OF ROGER CONNER

Good afternoon, Mr. Chairman, and Members of the Subcommittee. Thank you for this opportunity to present the views of the Federation for American Immigration Reform (FAIR) on the Immigration Reform and Control Act of 1983, S. 529. I am Roger Conner, Executive Director of FAIR. FAIR conducts a research and public education program on immigration, and is the largest membership organization in the United States working exclusively on immigration issues.

FAIR believes that immigration policy should reflect our best assessment of the long term interest of the American people. As a beginning, we should seek to stop illegal immigration and to reduce legal immigration to a level consistent with today's demographic, environmental, and economic realities. We fully support comprehensive legislation to reform our immigration laws, and last year FAIR was the most active organization in the country working to support the Simpson-Mazzoli bill, S. 2222.

THE BILL'S STRENGTHS AND WEAKNESSES

I recently had the opportunity to review our comments about that bill, made on April 1, 1982, in testimony before this Subcommittee. This year's bill, S. 529, is the same as the version of S. 2222 that passed the Senate last year by a vote of 80 to 19.

Due in large part to Senator Simpson's masterful control of the Senate's debate last year, S. 529 does not differ markedly from the version of S. 2222 introduced a year ago. Thus many of our comments on last year's bill are still valid for S. 529. Happily, many of the strongest parts of S. 2222 remain. Unfortunately, many of the weaknesses of that bill remain unsolved.

The bill's strengths are vital to any realistic program for immigration reform. S. 529 makes what most observers feel is the most important change needed in our immigration law: prohibiting the hiring of illegal immigrants in American jobs. The bill also establishes a flexible cap or ceiling on legal immigration to the United States, and removes some of the ill-advised provisions of the legal immigration system that promote chain migration, fraudulent use of the non-immigrant system by foreign students and aliens intending to remain as immigrants, and the disruption of families in source countries.

The bill's weaknesses, however, could undermine much of the progress we expect to come from the reforms of the immigration law. The most controversial section of the bill, the amnesty for illegal immigrants, is also one of the most dangerous for immigration reform. Passage of this type of broad, blanket amnesty will not only disrupt all immigration law enforcement for four years, but it will jeopardize any future attempts to reform immigration laws without additional amnesties. The "visa waiver" provision of the bill is an open invitation to immigration fraud, and the retreat from some of the reforms of legal immigration is a return to the nations of origin system, with all of its racial and ethnic biases.

UNEMPLOYMENT AMONG AMERICANS

Unlike those who oppose this bill, we see S. 529 as primarily a measure to put Americans back to work. It's a jobs bill. Yet it is different from many of the jobs bills currently circulating on Capitol Hill; it does not provide some temporary jobs for those without skills or for those in particularly depressed industries.

Over the next decade, this bill could provide thousands, even millions, of jobs in industries for American workers at many different levels of skills. The jobs produced by this bill will already exist in American industry; they will be stable and productive jobs. They will be permanent jobs that employers already need and use.

How will this bill, which doesn't even discuss jobs creation in its title or its language, perform this miracle? By replacing illegal immigrant workers in American jobs with American workers.

Recently new studies have become available that demonstrate that illegal immigrant workers displace American workers from jobs. Illegal immigrants take jobs that unemployed Americans would otherwise hold. Although the displacement is not total (that is, not every job now held by an illegal immigrant worker would be filled by an unemployed American if the illegal were removed), we know that the displacement is very large, that hundreds of thousands, if not millions, of jobs would be filled by unemployed Americans.

Jack Sheinkman, Secretary/Treasurer of the Amalgamated Clothing and Textile Workers Union, conducted a poll of local labor union leaders last September. Sheinkman was the chairman of a study group of the Economic Policy Council of the United Nations Association of the United States, a business/labor/public sector task force that examined the immigration problem in the United States. Sheinkman's poll of labor leaders uncovered virtual unanimity in the belief that the employment of illegal immigrants hurts American workers.

Sheinkman asked whether illegal immigrants were taking jobs from American workers in the areas in which the labor unions operated. Seventy-two percent of the labor leaders said illegal immigrants were taking jobs from Americans.

Sheinkman also asked whether illegal immigrant workers restrict improvements in wages and working conditions for American workers. Ninety-four percent of the labor leaders said yes.

Sheinkman then asked whether the government should punish employers who hire illegal immigrants. Ninety-seven percent of the labor leaders said that the government should punish the hiring of illegal immigrants.

Sheinkman's findings are corroborated by other studies. Donald Huddle of Rice University made a study of the construction industry in Houston, Texas, in 1981. Huddle reported "an astoundingly high one-third of all workers in sampled segments of commercial construction. . . were illegal aliens. . . . More than one million U. S. workers have been displaced." Huddle found that the illegal immigrants were making between four and nine dollars an hour in wages, far above the minimum wage.

Jaime Guerra, of the San Bernardino Sun newspaper, interviewed workers in industrial parks in Southern California. At one industrial park, Guerra found that 70% of the workers were illegal immigrants, working as electricians, carpenters, welders, and cabinet makers. The illegal immigrants were making more than the minimum wage, but four to seven dollars less per hour than American workers in similar jobs elsewhere.

Just last December, the Dallas Morning News conducted surveys of construction and restaurant businesses to determine whether illegal immigrants were employed in those industries and what effect the employment of illegal immigrants had on wages. Eleven of fifteen restaurants and nine of fifteen construction firms reported that they or their subcontractors employed illegal immigrants. More important than the widespread use of illegal immigrant labor in industries where unemployment is high, however, is the Morning News finding that American citizens were available to do the work. Employers preferred to hire illegal immigrant workers because they could offer lower wages ($6 an hour for an illegal immigrant construction worker; $9 an hour for an American worker), and because they felt that illegal immigrants complained less and worked harder. This survey demonstrates that, given a choice between illegal immigrant workers and American workers, many employers will choose illegal immigrants even though Americans are available.

As Vernon Briggs of Cornell University points out, the employment of illegal immigrants has a particularly pernicious effect on the American worker:

When any group increases its support in a labor market, there are both employment and wage effects. This fundamental truism is overlooked by most non-economists who study [immigration]. Illegal immigrants tend to be concentrated in selected occupations in selected geographical locations. By being concentrated, they are often numerically significant enough to influence wage levels in specific markets. Hence, the availability of illegal immigrant workers can have the effect of depressing wage rates in those occupations and industries in which they are present to such a degree that these industries are no longer competitive with alternative industries or other sources of income. Hence, it is a self-fulfilling prophecy to argue that citizen workers can no longer be found to do the work that illegal immigrants do. If illegal aliens are present, they will create conditions that will reduce the availability of citizen workers.

This is exactly what happened in the agricultural labor market of the southwest during the 1943-1964 era in which the Bracero Program was in effect. Mexican farm workers were allowed to work legally in the region's agriculture industry. As a result, agricultural wages were no longer competitive with non-agricultural wages for citizen workers. Hence, citizen workers rapidly moved into non-agricultural jobs in urban and rural areas. This set the stage for employers to complain that they could no longer find citizen workers, which prolonged the Bracero Program.

Even the most vociferous advocates of foreign labor recognize that illegal immigrants displace American workers in some jobs. Wayne Cornelius, an avid advocate for open borders with Mexico, admitted in a 1982 study of Mexican workers in the San Francisco, California, area, that: "Undoubtedly indirect displacement of U.S.-born workers and legal immigrants by Mexican illegals does take place as specific labor markets become depressed."

Federal officials are not unaware of these studies or of the implications for employment policy these results portend. Virtually everyone in the country hopes for economic recovery. Part of the desire for economic recovery stems from a desire to put America's unemployed back to work. Yet uncontrolled immigration is a danger to those hopes. Former Undersecretary of Labor Malcolm Lovell last year reported, at a seminar on displacement of American workers by illegals, that forty million American workers are in jobs in which they face competition from illegal immigrant workers. Since many of the jobs that should be created by the economic recovery will be in the area of competition between immigrants and American workers, there is a significant risk that many of the jobs created would go to illegal immigrants, and not to unemployed Americans.

The danger that jobs created by the economic recovery would go to illegal immigrants is a part of the economic recovery program with which this Subcommittee must deal. The Judiciary Committee rarely becomes involved in jobs creation bills, but here the Committee must be involved in a jobs protection bill.

The proponents of this bill should not shy away from discussing the link between immigration and employment. This bill will free hundreds of thousands of jobs in the near future, and potentially millions of jobs in years to come. Further, it will protect jobs created by the economic recovery that would otherwise be lost to illegal immigrants. This result is significant and should be regarded as a direct benefit. We suggest that the Subcommittee include an assessment of the expected jobs creation effect of this bill in its analysis and report, and that the Congressional Budget Office include the effects of that jobs creation in reduced governmental expenditures in its cost and revenue projections.

THE TIME FOR IMMIGRATON REFORM IS 1983

The time to pass immigration reform legislation is now. Unemployment is still at double digit heights. Increasing resentment by American minorities and the public at large is building toward a possible backlash against immigrants and immigration in general. The Congress is extraordinarily sensitive to the issue this year, after three years of preparation and effort. There is a widespread and growing feeling among opinion makers that 1983 is the year in which immigration reform legislation will finally pass.

The Committee and Members of Congress, however, would do well to heed the warning of James Russell Lowell that: "Truly there is a tide in the affairs of men, but there is no gulf-stream setting forever in one direction."

The dangers of failing to take advantage of this moment are very real. 1983 offers us a unique window of opportunity that may be closing. Frictions between Americans and immigrant groups is rising; violence has broken out between American minority groups and immigrants in cities across our country. Public opinion polls continue to reflect huge majorities of the American people who want to bring legal immigration below 400,000 per year, and to stop illegal immigration.

As you know, Mr. Chairman, those of us who work in immigration reform do not want to halt immigration altogether. We are interested in controlling immigration, in reducing immigration to a level consistent with our national interests, and in stopping the traffic in human misery that is illegal immigration. But these rising tensions portend a building resentment that should concern every caring and thoughtful Member of Congress.

THE NEED FOR AN EFFECTIVE AND WELL-BALANCED BILL

We must not delude ourselves, however, into thinking that activity is the same as reform. Ill-conceived or unworkable proposals adopted in an effort to pass a bill -- *any* bill -- would be a tragedy.

That realization requires us to oppose certain parts of this bill. We cannot support measures that will worsen our immigration situation, however well-phrased may be the rationale. We desperately want immigration reform, but we are unwilling to ignore impending disasters in the hope that the good will outweigh the bad.

It is our intention to support changes in this bill, in the hope that the lengthy legislative process will cure its ills, at least to the degree that the real reforms in the bill will not be subverted by the dangerous provisions introduced by selfish and closed-minded narrow interests. If, however, we find that the bill will hurt the cause of immigration reform more than it will help it, we will not hesitate to oppose its final passage.

GENERAL CONCERNS WITH S. 529

Mr. Chairman, I will now discuss some concerns we have about this bill. First, we are deeply concerned that the bill will not be adequately enforced:

Without a proper level of enforcement, no law, no matter how strongly desired or well-conceived, will be fully effective. This measure is by no means self-enforcing. Though we can expect voluntary compliance by American employers to take care of much of the illegal alien problem, many of the reforms proposed in this bill are aimed at actors who cannot be expected to be as cooperative: irresponsible or unscrupulous employers, and aliens who want to come to the U. S. despite our laws. Experience reveals that both groups will go to great lengths to circumvent or disregard our immigration laws. Therefore, a stronger enforcement commitment is required.

This Subcommittee must give more serious thought to the enforcement needs of the Immigration and Naturalization Service. Congress has provided more funds for the INS than asked by the Administration. But we have made only the most modest beginning to reverse a process that has taken twenty years to develop.

This Subcommittee should take the lead in determining what are the real needs of the INS in immigration law enforcement. You cannot expect the Administration, in the throes of budgetary crises and with the burden of undoing years of budgetary neglect of INS, to produce a proposal for an acceptable level of funding.

I am not blindly asking for more funds. I am asking that this Subcommittee recognize the magnitude of the task it is placing before the INS. Years of neglect have left the INS battered and weary; it is unable to carry out its present assignments. It is true that present INS personnel can be expected to rise to their new tasks with enthusiasm, but even the most motivated individuals are not able to conduct an overwhelming task without help.

In these difficult financial times, it would also be well to provide a source of offsetting revenue for the expenditures provided in S. 529. While the bill contains some half-hearted language entreating the Attorney General to charge user fees, this provision adds nothing to existing governmental powers to do so.

Those who seek the benefits of INS services should be prepared to pay the full cost of those services. Residence and citizenship in the United States are among the greatest gifts that can be provided any person; the taxpayers should not be called upon to subsidize intending immigrants. The INS should also be able to assess costs and penalties against those who use its services in bad faith or who are repeated offenders.

This Subcommittee should amend S. 529 to direct the necessary level of enforcement resources for the INS to carry out its regular tasks and to perform the new duties created by this bill. In addition, the Subcommittee should provide explicit authority for the Attorney General to charge the full cost of immigration services to those who seek benefits, and to assess penalties and charges for the abuse of those services.

The amnesty proposed in S. 529 should be changed.

We realize that the Subcommittee (and you in particular, Mr. Chairman) has wrestled at length with the very difficult problem posed by illegal immigrants who have worked and lived in this country for some years. You face an intractable dilemma: How can you deal humanely with those who have developed a firm attachment to our communities without violating the sense of fairness among Americans by rewarding illegality and triggering a further flood of illegal immigrants by arousing the inevitable hope for future amnesties?

Unfortunately, the amnesty provisions of S. 529 are not the answer to this dilemma. The amnesty portion of the bill needs to be re-examined and re-drafted, for it is an administrative nightmare, it is unfair, and it could hamstring immigration law enforcement for many years to come.

The amnesty program proposed in the bill has an elaborate structure and multi-year implementation phase that would create a massive new administrative task for INS. It is the worst of all worlds: some illegals who don't comprehend it may not come forward; it is extremely vulnerable to the unscrupulous illegals who will seek to manipulate it to secure admission; and it is certain to stir resentment among Americans who feel that they are being taken advantage of.

The proponents of amnesty suggest that the administration of the program will be significantly eased by utilizing the services of voluntary agencies ("volags"). The idea is that the volags will do the preliminary screening of applicants for legalization, leaving INS free to adjudicace only those applicants who have passed certain early tests.

In essence, the amnesty proponents are suggesting that critical functions of the INS -- screening applicants for permanent residence in the United States -- will be "contracted out" to private agencies. As the recurrent battles between the volags and the INS over refugee processing demonstrate, any relationship between the two sectors is likely to dissolve into conflict. The volags will attempt to be lenient in processing, and will excoriate INS if it does not accept their findings of eligibility. INS officers will attempt to do their job implementing the requirements of the law, under tremendous pressure from their superiors to "rubber stamp" or quickly approve volag recommendations.

We have obtained copies of documents sent from the Central Office of the INS to its officers around the country late last year. The INS anticipated that Simpson-Mazzoli would pass, and convened a special planning team in the Central Office to prepare instructions on how their local offices should carry out the new law. These documents reveal that, in effect, the decisions of the volags will be final in millions of cases. If you doubt that INS would allow such power to be wielded by the volags, let me quote from the documents themselves:

> The Service role should be limited to supervision and administration of the program, and the only extensive involvement of Service personnel should occur at three points: (a) the training of personnel, (b) the final determination fo eligibility, and (c) investigative activities to insure, at a certain level, the integrity of the program.
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> 1. The major emphasis must be on according temporary or permanent resident status to as large a number of eligible applicants as possible, as this is first and foremost a benefit program.
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> 4. In screening applications, major emphasis will be placed on security risk and excludability, with a minimum amount of screening of continuous residence.
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> 6. Because of the scope and temporary nature of the program, major reliance must be placed on the services of voluntary and community agencies to counsel applicants and process applications. Service involvement should be restricted to the initial training of agency personnel and other participants, and to the final determination of temporary resident status and adjustment of status.

Yet these same agencies oppose some of the conditions of eligibility they will be asked to enforce! This type of program mandates a conflict of interest in the most fundamental sense: to pay tax dollars to private agencies that are opposed to key concepts in this legislation and to expect these agencies to conscientiously implement the very provisions they oppose.

Clearly, if INS does not have the resources at present to administer the amnesty, it should get more resources for hiring and training its own employees to do the job. The participation of the volags in the process will not ease the administrative burden, and will certainly result in additional administrative or enforcement problems. At a minimum, the legislation should be amended to permit agencies other than the volags (which oppose the passage of the bill) to share in the implementation of any program. A far better solution would be to retain INS control over the entire process.

Nor will the administrative burden be eased by simply declaring that all who appear will receive legalized status, as some claim in an effort to support an immediate blanket amnesty for all illegal immigrants. Because no one wants to admit criminals or clearly excludable people, every applicant will need to be examined to determine eligibility.

We can safety predict, therefore, that any grant of amnesty will create a tremendous administrative burden on INS. The only possible means of reducing that burden is by reducing the number of people eligible for legalization of status.

The administrative burden is not our only concern about the amnesty proposal. The costs of amnesty are enormous. Estimates run into several billion dollars in federal costs over the next five years, and an unknown additional amount in non-federal governmental costs.

To compound our concern, we know that any amnesty proposal is but an incentive for future illegal immigrants to try to enter. As you have noted in the past, Mr. Chairman, the communications channels to immigrant source countries are very good. Reasonable persons can and should anticipate many more illegal immigrants entering the country solely to seek eligibility for the "next amnesty."

In essence, what we are telling people around the world is that if they can get into the United States and avoid detection for a little while, citizenship will soon be theirs. As this amnesty is currently proposed, administrative problems may enable illegals to quality regardless of how ineligible they may be technically, and regardless of what laws they have broken previously. We are sending a message that will encourage more illegal immigrants to come and stay as long as possible. In an effort to avoid any break in residence period, illegals will have incentives to avoid deportation AND to resist Voluntary Departure.

Most importantly, an improperly planned and poorly administered amnesty will fail to deter those who would normally return home as a result of employer sanctions. We will no longer be in a position to promise that employer sanctions will release a significant number of jobs now held by illegal immigrants (even those held by individuals with no ties to their communities). Is this subcommittee prepared to tell that to 12,000,000 unemployed Americans?

Once amnesty is given, it can never be taken away. The reverse is not the case. Thus we must be very careful in granting any amnesty.

The amnesty proposal in S. 529 should be replaced by a new, simpler, but more realistic model; one that the American people can accept. That model should be a simple revision of the date for eligibility to have the INS prepare a record of permanent residence.

This procedure, known as registry, is currently in the Immigration and Nationality Act as Section 249. Registry operates much like a statute of limitations for other crimes. The current date of eligiblity for Section 249 registry is 1948. We could bring that date far forward, to the middle 1970s, and encompass most, if not all, of the illegal immigrants with long residence and close ties to the United States.

Registry is the only form of amnesty that would make sense, given our current immigration problems. Registry can be enforced by the INS using regulations and rules it has promulgated and tested in the past. Registry offers a simple, easily understood procedure that would be used by as many as possible who are eligible.

Registry with a mid-1970s eligibility date keeps the number of eligible aliens at a politically acceptable level while allowing consideration for those aliens who have been in this country for some time. Again, this Subcommittee must remember that once amnesty is given, it cannot be taken away. Until future illegal immigration is controlled and employer sanctions are working, the Subcommittee should be very cautious about granting a very expensive eligibility date.

Although the ceiling on legal immigration is welcome, the legal immigration section of the bill should be strengthened.

We are pleased that S. 529 forthrightly addresses the needs of the United State on legal immigration. Paramount in these needs is the necessity for providing some control over legal immigration. The proposal to provide a flexible ceiling on legal immigration is vital to the comprehensive nature of the bill.

The pressures of the legal immigration system have grown enormously in the last decade. Many people believe that legal immigration is limited to 270,000 visas each year; unfortunately, that is only a limit on a few types of immigrants. The cap at 425,000, not including refugees, is no real change from present levels of immigration. The cap does insure that, except for refugee admissions and admission of immediate relatives of United States citizens, legal immigration will not grow substantially larger without additional Congressional action.

Although the cap is a welcome addition to our immigration laws, some of the other proposals in S. 529 for expanding legal immigration eligibility are not. The provision for expanding the number of visas for Mexico is especially distasteful, since it is a return to the old National Origins system, which judged a potential immigrant on the basis of his or her nationality, not on his or her personal qualities.

We believe that to reëstablish a preference system based on ethnicity or nationality is a step backwards towards racial and ethnic quotas. It should not be placed into the statute by this bill. The idea that one immigrant is better than another because of the birthplace of each is a concept that we eliminated in 1965; it should not be revived.

Some proponents of increased immigration have cited the codewords "family reunification" as justification for attacks on the new legal immigration system proposed in S. 529. We would like to point out that the phrase is a misnomer as applied to defend the current preference system. Our legal immigration system does not reunify families; in fact, it splits families apart in source countries in the hope that the migrating family member will later be able to bring the rest of the family into the United States. This is a chain migration system.

A legal immigration system that reunifies families split apart by forces beyond their control, or one that allows United States citizens who marry abroad to bring their immediate families here, could be more easily maintained if the United States chose a system of "packet migration." In packet migration, families migrate together. Our law, with its provisions for "following to join" or "accompanying" aliens make packet migration possible now.

This Subcommittee should resist attempts to further broaden the already generous provisions designed to admit legal immigrants. Our immigration system is the most generous in the world. We admit more immigrants than the rest of the world combined. It is sad that we cannot admit every person in the world who would like to come here, but we must make choices. We believe that the choice we make should be to admit those family members closest to United States citizens and permanent resident aliens. Legal immigrant visas should be reserved for those aliens.

The Congress should make clear that the precious benefit of admission to the United States is not accompanied by the right to have a preference for those outside the immediate family. To do otherwise will be to encourage more chain migration than is already occurring.

The new asylum and immigration benefit adjudications reforms should be maintained.

S. 529 provides a new structure and theory for determining whether an alien should receive an immigration benefit, including the grant of asylum. This new structure is a reaction to the breakdown of the adjudications and asylum procedures of the INS in recent years. Since the 1980 Cuban boatlift, the INS has been deluged with applications for benefits of all types. Many of the problems of the agency are attributable to this overload.

The theory of adjudications under current law is to provide swift hearings at the initial adjudications level, without extensive procedural due process. Once the initial hearing is over, if the decision is adverse to the alien, there are many layers of administrative and judicial appeals. Most of these appeals are de novo proceedings, in which every part of the record and issue is open for examination; in other words, an entirely new hearing is conducted at each level.

The new theory and structure are designed to provide more procedural safeguards at the initial hearing level. Since fewer mistakes are likely to be made when the alien is entitled to a full hearing, the later appeals can be more restricted and fewer in number. Thus, although the alien is provided with more rights initially, the process overall will be streamlined.

Some criticism has been voiced by those who want both more due process at the initial level and de novo proceedings in interminable appeals. Yet the question at issue here is simply how many levels of due process de novo appeals are enough. We believe that the bill has provided a correct balance between the need for swift adjudication of status and benefit questions and the desire of the alien for due process rights in immigration proceedings.

The Subcommittee should ask all critics of this new structure this question: how many new immigration judges will be needed to have prompt decisions should the Congress accede to their demands for ever more procedures?

Other critics have attacked the proposal in the bill to exclude aliens with absolutely no claim to enter the United States, no documents entitling them to enter, and who make no claim for asylum. This procedure is the same as is used for alien crewmen who attempt to jump ship. Our immigration laws are already extremely generous. Two hundred seventy four million border crossings are made each year and the INS turns back hundreds of thousands of persons without documents every year. If even a fraction of those one-quarter of a billion people demanded and received a hearing, the entire immigration process would break down.

It is important to understand what is being sought here. The immigration lawyers who lobby for more hearings for aliens who approach the border with no documents at all are the same lawyers who insist that the aliens be allowed to live and work in the United States pending the completion of the hearings. It is neither difficult nor unusual for the hearing to be delayed, and then extended for years. By the time the process is completed, the alien has generally become a de facto, if not a de jure, resident of the United States.

This practice should be discouraged by S. 529. The "summary exclusion" provisions in this bill are not a great change from prior law; they should be retained.

We urge the Subcommittee to maintain the adjudications proposals through the entire legislative process. Pressures for the grant of immigration benefits are rapidly rising, while our adjudications system is almost paralyzed through overwork. The proposals in this bill offer a chance for a generous, though controlled, expansion of the rights of aliens in immigration benefit hearings.

CONCLUSION

We thank the Chairman and the Members of this Subcommittee for their diligent effort in bringing immigration reform legislation to the Senate. We hope that the Senate will act, as it did last year, to pass good immigration reform legislation by an overwhelming vote. The Senate did its part last year in providing immigration reform legislation. It should act swiftly to demonstrate its leadership on the issue again this year.

Senator SIMPSON. Now, Carole Baker, please.

STATEMENT OF CAROLE L. BAKER

Ms. BAKER. Mr. Chairman, thank you for this opportunity to testify today on behalf of Zero Population Growth.

I also want to thank you, Mr. Chairman, for the exceptional leadership and dedication you have shown in moving this important legislation.

I would like to submit my full written testimony for the record and will be brief and only highlight it here today.

Senator SIMPSON. Without objection, it is accepted.

Ms. BAKER. ZPG is a nonprofit membership organization founded 15 years ago to mobilize broad public support for population stabilization in the United States and worldwide, as a requisite for all human beings to obtain a decent quality of life.

ROLE OF IMMIGRATION IN POPULATION GROWTH

Our interest in immigration relates to the role it plays in population growth in the United States. Our Nation's environmental and resource problems are all caused in part by population growth. We Americans now number over 232 million. For every three of us today, there will be four by the year 2000. At this rate of growth, the United States is adding another California to its population each decade and a new Washington, D.C., every year. Your own State of Wyoming, Mr. Chairman, had a 41.6 percent population increase over the past decade.

Continuing immigration, both legal and illegal, adds greatly to present and projected population growth. Current estimates indicate that 40 to 50 percent of our Nation's growth is attributable to immigration. By 2030 all growth in population will be from immigration if current fertility levels hold.

IMPACT OF POPULATION GROWTH

Unfortunately, the population problem is seen by many as a Third World worry. In fact, the present U.S. population has tripled since the turn of the century. Today American local governments try to cope with the sudden influx of immigrants who intensify competition for unskilled jobs, crowd into low-cost housing and place unplanned for demands on educational welfare programs.

Resource constraints caused in part by population growth have contributed significantly to economic inflation, stagnation, recession, and depression. In 1972 a presidential population commission concluded, "We have found no convincing argument for continued national population growth." In 1974, then Governor of California Ronald Reagan stated, "Our country has a special obligation to work toward the stabilization of our own population so as to credibly lead other parts of the world toward population stabilization."

U.S. POPULATION POLICY

In spite of these and many other such pronouncements, the United States still has no population policy and no specific demographic goals. It is pertinent to note that next year marks the 10th anniversary of the United Nations world population conference in Bucharest. At the 1974 conference, the United States joined 136 other nations in endorsing a world population plan of action, which included the following recommendation:

> Population measures and programs should be integrated into comprehensive social and economic plans and programs and this integration should be reflected in the goals, instrumentalities, and organizations for planning within the countries.

Although our Nation is now preparing to participate in the 1984 world population conference, we still have no articulated policy for national population growth and change.

You stated yesterday, Mr. Chairman, that the Select Commission and the members of your subcommittee were stunned that this country has no population policy. I hope that means that each member of your committee will cosponsor Senator Mark Hatfield's population policy bill which is going to be introduced shortly in the Senate.

Senator SIMPSON. Oh-oh. [Laughter.]

S. 529

Ms. BAKER. Meanwhile, there is legislation at hand to address today's problems and for the most part ZPG supports S. 529 and urges its prompt passage.

We have six brief comments we would like to make, many of which have been supported by previous testimony you have heard.

S. 529 AND POPULATION POLICY

One, immigration should be addressed as part of an overall population policy. We urge the subcommittee to consider additional language that would have all immigration levels linked to a national policy of population stabilization and that would design and establish an immigration advisory council to collect and report annually on demographic, economic and fertility data. In fact, the Select Commission considered such a council and could provide a model for its design and implementation.

ANNUAL CAP

Two, we support the proposed annual cap of 425,000 legal immigration. Considering that there could be added some 75,000 refugees, and not considering any illegal immigrants, annual immigration would then total about 500,000.

It can be seen in appended exhibit A, developed by Population of Reference Bureau, that at the 500,000 annual immigration level, population would peak in 2040 at 294.7 million. With 1 million immigrants annually, which is today's estimated total, including illegal aliens, there is no peak in sight.

While there is no agreed upon desirable population level for stabilization, some believe that the United States has already surpassed a sustainable level. Because our current numbers are straining available resources, we need to reach stabilization at the lowest possible level while a range of options still remains.

EMPLOYER SANCTIONS/WORKER VERIFICATION

Point three, we support employer sanctions and a system for worker verification. To be effective, these systems must be integrated with each other and must have sufficient funding and resources, since failures of sanction programs in other countries resulted principally from lack of resources and political commitment, as you pointed out, Mr. Chairman.

The sanctions program must be accompanied by appropriate oversight, reporting and review, as you stated yesterday, Mr. Chairman, if we are to protect the civil rights of legal immigrants and citizens alike.

LEGALIZATION

Point four, we support legalization for aliens illegally present in the United States and feel that it is wiser and more humane to integrate these individuals into society than even to consider mass deportation. We do believe, however, that legalization must be accompanied by strict measure to curb future illegal immigration.

FUNDING FOR INS

Point five, we support the provision of adequate funding to enable the Immigration and Naturalization Service to implement the reforms provided in this legislation. This must be a crucial aspect of any comprehensive legislation or the agency might be forced to take existing staff away from routine work to reassign them to new programs, with still no assurance of effective implementation.

H-2 PROGRAM

Finally, we oppose the expansion of the current H-2 guest worker program which would enable an employer to sidestep sanctions and undermine the employer sanction system.

In closing, I want to reaffirm ZPG's belief that continued immigration is a benefit to this country, bringing us cultural diversity and unique strengths. We believe that a balance can be struck that provides for both immigration and limits to growth.

We are grateful, Mr. Chairman, for the opportunity to work with you on this legislation so vital to our country's present and future well-being. We will welcome any future opportunities to assist this panel in its deliberations. Thank you.

Senator SIMPSON. Thank you very much.

[The prepared statement of Carole Baker follows:]

PREPARED STATEMENT OF CAROLE L. BAKER

Mr. Chairman, Members of the Subcommittee: Thank you for this opportunity to testify today on the Immigration Reform and Control Act of 1983, S. 529. On behalf of Zero Population Growth, I also want to thank you, Mr. Chairman, for your leadership and dedication in designing and progressing with this important legislation.

Zero Population Growth, Inc. (ZPG) is a non-profit membership organization which was founded fifteen years ago. Our objective is to mobilize broad public support for population stabilization in the United States and worldwide, as a requisite for all human beings to attain a decent quality of life. (Stabilization is the attainment of a balance in which births plus immigration equal deaths plus emigration.)

Our nation's environmental and resource problems--such as the increasing loss of topsoil and prime farmland; the proliferation of toxic wastes; water and air pollution; acid rain; species extinction; deforestation and desertification with resulting climatic changes--are all caused in part by population growth. It is sobering to realize that, although Americans comprise only five percent of the world's population, per capita they use eleven times the world average of energy, six times the steel and four times the grain.

As the world's fourth most populous nation, the United States expanded its population in 1980 by 2.3 million people, not including illegal immigrants, at a growth rate of 1.02 percent. This represented the second greatest population growth of any developed nation. We Americans now number over 232 million. For every three of us today, there will be four by the year 2000. At this rate of growth, the U.S. is adding another California to its population each decade, and a new Washington, D.C. every year.

Natural increase--the excess of births over deaths, as well as net immigration, contribute to that 2.3 million increase. Although each American woman is bearing, on the average, fewer children than women did in the past, the total number of babies born annually is still on the rise. The women born during the "baby boom" generation, who are now in or are entering their childbearing years, contribute substantially: in 1980, 3.6 million babies were born--an increase of 4% over the year before. The 1980 U.S. fertility rate reached 1.875, the highest since 1974. Demographers project a continuing increase in the numbers of babies born each year, reaching a level of four million annually before tapering off towards the end of this decade.

Continuing immigration, both legal and illegal, adds greatly to present and projected population growth. Current estimates indicate that 40 to 50 percent of our nation's growth is attributable to immigration. The flow of immigrants to the U.S. is approaching record levels. Immigration rose dramatically in the decade of the '70's and may once again climb as high as in the first decade of this century, when about nine million entered the country. These record levels are expected to continue and even to accelerate, due in part to the population growth in the source countries. According to the "push-pull" theory, immigrants will be pushed from their homelands by overpopulation, resource depletion, unemployment and consequent political instability, and will be pulled into this country by job prospects and an ever-widening divergence in per capita income.

Unfortunately, the population problem is seen by many as a third world worry, a problem of the developing nations. In fact, the present U.S. population has tripled since the turn of the century. Today, American local governments try to cope with the sudden influx of immigrants, who intensify competition for unskilled jobs, crowd into low-cost housing and place unplanned-for demands on educational and welfare programs. Clearly, industrialized countries are not immune to the impacts of increased population. Resource constraints, caused in part by population growth, have contributed significantly to economic inflation, stagnation, recession and depression. The Japanese, for example, have experienced a rapid rise in per capita income, approaching Western European levels, and yet they cannot attain the Western European quality of life because of overcrowding, lack of living space and a scarcity of natural recreation areas.

The concept that the problems of population growth, resource depletion and environmental degradation are something we must deal with solely in the future is a myth. The problems are upon us. The 1980 National Agricultural Lands Study found that population growth and shifts are major factors in the annual loss of three million acres of U.S. agricultural land. Furthermore, American farmers attracted by the world grain market have adopted practices that resulted in the erosion of four to five billion tons of topsoil in 1982 alone. At the same time that these losses have been occurring, the demand for United States agricultural products is rising steadily due to worldwide population growth and increased per capita consumption. Demand for U.S. farm products may increase by 85% by the end of the century. For instance, in 1980, the world's food production increased by approximately .27%, while population grew by 1.7%. This means that less food is available per capita, at a time when over 600 million human beings are severely malnourished. In the meantime, parts of our nation are running out of safe and sufficient ground water supplies, soil erosion is worsening, and desertification is ruining several regions of this country.

Population stabilization is one of the necessary tools to address these problems and to assure better living conditions for all people. Stabilizing the population and reaching zero population growth will help us solve the many crucial and complex economic, resource, and political problems confronting us. It was former Secretary of Defense and President of the World Bank, Robert S. McNamara, who cited overpopulation as the gravest threat to mankind, next to nuclear war. The 1970-72 Presidential

Population Commission concluded,"... we have found no convincing argument for continued national population growth." In 1974, the then Governor of California, Ronald Reagan, stated, "Our country has a special obligation to work toward the stabilization of our own population so as to credibly lead other parts of the world toward population stabilization." Furthermore, the industrialized countries, recently concluding the Ottawa Summit on global economic conditions, agreed in their Summit Declaration that they "are deeply concerned about the implications of world population growth. . .and will place greater emphasis on international efforts in these areas."

In spite of such pronouncements, the U.S. still has no national population policy and no specific demographic goals, and, indeed, no overall program to help ease population pressures in other countries. It is pertinent to note that next year marks the tenth anniversary of the United Nations World Population Conference in Bucharest. At the 1974 conference, the United States joined 136 other countries in endorsing a World Population Plan of Action. One recommendation of the Plan is that,

> "Population measures and programmes should be integrated into comprehensive social and economic plans and programmes and this integration should be reflected in the goals, instrumentalities and organizations for planning within the countries. In general, it is suggested that a unit dealing with population aspects be created and placed at a high level of the national administrative structure and that such a unit be staffed with qualified persons from the relevant disciplines."

Although our nation is preparing to participate in the 1984 conference, we still have no articulated policy for national population growth and change.

Only Austria and Italy provide a smaller share of their GNP for foreign aid, than the United States. If we are to deal with immigration as a problem, we must confront the circumstances that cause people to migrate from their native lands. The U.S., in a comprehensive cooperative international endeavor, should direct more of its financial and technical assistance to help other countries to carry out family planning programs; to expand employment opportunities, create jobs, and promote economic stability; and, to defuse political tension and avert military conflict. Efforts such as these could lead to a notable drop in the numbers of immigrants entering the U.S.

Meanwhile, there is legislation at hand to address today's problems. For the most part, ZPG supports S. 529. Our comments specific to S. 529 are as follows:

- Immigration should be addressed as part of an overall population policy. We urge the Subcommittee to amend the bill by adding these provisions:
    - All immigration levels should be linked to a national policy of population stabilization.
    - An immigration advisory council should be designed and established to collect and report annually on demographic, economic and fertility data. (The Select Commission on Immigration and Refugee Policy considered such a council and could provide a model for its design and implementation.)
- We support the proposed annual cap of 425,000 legal immigration. Considering that there could be added some 75,000 refugees, and not considering any illegal immigrants, annual immigration would then total about 500,000. To illustrate the numerical results of admitting that same total every year, we have appended as Exhibit A a table of population projections for the United States for the years 2000 through 2080. The projections, which have been provided by the Population Reference Bureau, contrast the annual net immigration totals of 0, 0.5, 1.0 and 1.5 million people.

It can be seen that, even with no immigration at all, population would continue to rise until about 2020, when it would reach 266.5 million and then begin its downward trend toward stabilization. At 0.5, population would peak in 2040, at 294.7 million. With one million immigrants, which is today's estimated total (including illegal aliens), there is no peak in sight. In 2080, the U.S. population will have reached 340.1 million and will still be rising. While there is no agreed-upon desirable population level for stabilization, some believe that the U.S. has already surpassed a sustainable level. Because our current numbers are straining available resources, we need to reach stabilization at the lowest possible level, while a range of options still remains.

o We support employer sanctions and a system for worker verification. To be effective, these systems must be integrated with each other and must have sufficient funding and resources, since failures of sanction programs in other countries resulted principally from lack of resources and political commitment. In addition, we urge the Subcommittee to amend the bill with language that protects the civil rights of legal immigrants and citizens alike, and penalizes discrimination and any abuse of the worker's eligibility system. This means, in part, that the sanctions program must be accompanied by appropriate oversight, reporting and review. We believe a system can be devised that would significantly minimize the potential for discrimination.

o We support legalization for aliens illegally present in the United States, who entered prior to the dates stated for this purpose in the bill. Certainly, we feel that it is wiser and more humane to integrate these individuals into the society, than even to consider mass deportation. We believe, however, that legalization must be accompanied by strict measures to curb future illegal immigration.

- **We support the provision of adequate funding to enable the Immigration and Naturalization Service to implement the reforms** provided in this legislation. This must be a crucial aspect of any comprehensive legislation, if it is to be effective. Unless INS funding is substantially increased, the agency might be forced to take existing staff away from routine work and to reassign them to the new programs.

- **We oppose the expansion of the current H-2 guest worker program.** It appears that an employer could sidestep sanctions by hiring temporary foreign labor through the H-2 program. Such a practice would undermine the employer sanctions system.

In closing, I want to reaffirm ZPG's belief that continued immigration is a benefit to this country, bringing us cultural diversity and unique both immigration and limits to growth.

Mr. Chairman, we are grateful for the opportunity to work with you on this legislation that is so vital to our country's present and future well-being. We will welcome any further opportunities to assist this panel in its deliberations.

Exhibit A

PROJECTED
TOTAL U.S. POPULATION, YEARS 2000 - 2080, BY ANNUAL NET IMMIGRATION (in millions) (*)

Annual Net Immigration (in millions)	Years				
	2000	2020	2040	2060	2080
0.0	255.9	266.5	256.4	235.9	214.9
0.5	267.4	291.5	294.7	286.6	277.0
1.0	279.1	316.9	333.8	338.2	340.1
1.5	290.9	342.4	373.0	390.0	403.4

(Assuming native U.S. fertility rate of 1.8.)

(*) Provided by Demographic Information Services Center (DISC) of the Population Reference Bureau, 1337 Connecticut Avenue, N.W., Washington, D.C. 20036 (telephone: 202-785-4664)

Senator SIMPSON. John Shattuck, please, for the ACLU.

STATEMENT OF JOHN SHATTUCK

Mr. SHATTUCK. Thank you very much, Mr. Chairman. We are, as always, pleased to appear before you, even at this late hour on a Friday afternoon, and we will try to be brief in order to speed up the deliberations of the subcommittee.

I have a prepared statement which I will summarize.

Senator SIMPSON. Thank you.

Mr. SHATTUCK. We believe that it is urgent, Mr. Chairman, to develop a national consensus on legislation which will, in fact, deal with the problem of millions of undocumented workers and which does so in a way which is consistent with our national commitment to protection, nondiscrimination, and respect for human and civil rights, all goals which I know the subcommittee shares.

Mr. Chairman, we hope that all of us involved in this process of reaching this—trying to reach this consensus, will be willing to take a fresh look at the problem and see if solutions can be found which meet the objectives which we all have.

We certainly have done so and I hope our statement reflects that.

In taking our own new look at this issue, we focus first on the importance of legalization for the protection of civil liberties. There are only two alternatives to an effective and humane legalization problem and both of them proves unacceptable cost from a civil liberties standpoint.

The first option is to do nothing. This, of course, would mean that we would continue to have in the United States under class of individuals, billions of people who would be entitled to the protection of the bill of rights but unable to enjoy those rights in any kind of liberal situation in which none of us would benefit, least of all those who are in that situation.

A second option is to seek to identify and apprehend and deport all or most of the undocumented individuals now living in the United States. The consequences of such an effort are so horrendous that it has not been seriously proposed. Finding the individuals to deport would obviously pose major problems for—of intrusion into the lives of many Americans as well as those who would be sought for deportation; enforcement problems would be overwhelming and we are pleased that that option is not under consideration.

Thus, we are left with the third option which is an effective and generous legalization program. We view the enactment of such an legalization scheme as one of the most urgent tasks facing the Congress and we look forward to working with your subcommittee and with the House and others in the Congress for speedy enactment of that legislation.

We recognize, Mr. Chairman, that any legislation which provides for legalization must as a practical matter contain provisions which would deter employers from simply continuing to hire undocumented workers. As you know, in the past we have opposed a sanctions provisions contained in the legislation that was before you last year and we must continue to oppose such procedures. We do so on the grounds that they would inevitably lead to discrmination against some Americans again because they would almost certainly lead to an employee identification card down the road a piece, if not right away, with serious civil liberties consequences.

We also believe that the arrangements which have been proposed in the past will simply not work. Whatever one may think about that GAO report, it would appear that the sanctions systems in other countries in this point in time are not working. Maybe they will be brought into a situation where they will. Those employers who are engaging in the practice of hiring undocumented workers will, we believe, continue to do so.

We urge the committee to consider carefully the evidence as to the effectiveness of this scheme. It is not sufficient to say that sanctions are necessary. The system which will not accomplish its purposes and which at the same time will give rise to discrimination and pose a massive threat to civil liberties is unacceptable.

That is one side of the equation. On the other side, Mr. Chairman, consistent with our view to have a new look focused on this issue without eliminating what the subcommittee has done and what so much work has gone into over the years with respect to the development of a scheme for enforcing the immigration laws effectively, we would urge you to take a look at something which is not entirely new. We believe that our approach is worth a look. It would be under this approach, it would be unlawful for employers intentionally to hire undocumented workers. An employer sanction system would be enacted but there would be no general requirement for the Government to develop and employers to inspect a new secure form of identification.

Rather, enforcement would center on firms found to engage in a pattern of practice of intentionally hiring undocumented workers. Any employer cited for such violations would then be required to report any new hiring to the Government. Responsibility for enforcing the law would not rest with the INS, but rather with officials having experience in enforcing employment laws.

This unit would also be charged with insuring that enforcement of the law did not result in unlawful discrimination.

This approach, we believe, Mr. Chairman, if I could just have a couple more minutes to spell it out, even though I realize my red light is going on, we think would have the virtue of focusing the immigration enforcement effort on large employers with a clearly established record of employing and exploiting undocumented workers. It would thus eliminate the incentive for all employers to play it safe by discriminating against foreign-looking workers and it would encourage large employers to comply with fair labor standard laws in order to avoid being targeted for close scrutiny as a suspected exploiter of undocumented workers.

The two key elements of this proposal, which we advance as a discussion matter, and bitterly are still discussing it at length with other interested parties, are that it would focus the targeted enforcement of the law where the biggest problems are. It would in that respect parallel to a certain extent the voting rights act approach towards enforcing the voting rights of all Americans in areas of the country where the government is involved in any event, where there have been very substantial problems.

It would also have, we believe, a deterrent effect very similar to your bill, but it would disengage the employer sanction scheme somewhat from its collision course with title VII of the employment and discrimination laws where we think the match is simply not there; title VII is not as strong an enforcement scheme as the employer sanctions scheme contained in last year's bill.

So we urge you, Mr. Chairman, to consider seriously this; we realize that there are many aspects of this proposal that we have not spelled out and perhaps even that we have not thought out. But we are very anxious to engage in a dialog with you, whether either here or in the future with your staff.

Finally, one point, Mr. Chairman, that is the issue of asylum adjudication. We think that is the third and major subject in the bill, as you know. We would frankly take issue with the position that was suggested in one of your questions and that is that there is such an overwhelming backlog of asylum cases that the whole system is breaking down.

We would urge you to look at the quotation from the House Judiciary Committee report that is contained on page six of our statement, which we think where the House reached the conclusion that it is really unfair to blame existing backlogs on the courts, very small number of asylum cases, in fact, reach the courts. But we think it would be a very severe setback for civil and human rights to cut the courts off entirely from adjudicating those schemes.

We would recommend to you the administrative scheme which was embodied in the bill last year, reported by the House Judiciary Committee.

So those are essentially the recommendations that we make. We would be delighted to answer your questions and to work closely with you and your staff and other members of the subcommittee in the weeks ahead.

Senator SIMPSON. Thank you very much.

[The prepared statement of John Shattuck and memorandum from the ACLU follow:]

PREPARED STATEMENT OF JOHN H. F. SHATTUCK

Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity to appear before this Subcommittee to present the views of the American Civil Liberties Union on the question of immigration reform legislation. The American Civil Liberties is a nationwide, non-partisan organization of more than 275,000 members, devoted solely to protecting and enforcing the Bill of Rights.

The debate on the floor of the House of Representatives last year makes clear, we believe, that this legislation arouses intense passions from many directions and that the legislation could have a profound impact on the nature of our society. We believe that it is urgent to seek to develop a national consensus on legislation which will in fact deal with the problem of millions of undocumented workers and which does so in a way which is consistent with our national commitment to equal protection, non-discrimination, and respect for human and civil rights.

In the past, the ACLU has opposed specific legislation because we believed that the employer sanctions provisions posed a threat to civil liberties, would inevitably lead to discrimination in hiring, and would be unenforceable. We have also objected to the provisions relating to political asylum because we believed that they would have violated the due process rights of those seeking political asylum and were not consistent with our treaty obligations.

Mr. Chairman, we hope that all of those involved in this process will be willing to take a fresh look at this problem to see if solutions can be found which meet the objectives which we all have.

In taking our own new look at this issue we have focused on the importance of legalization for the protection of civil liberties. There are only two alternatives to an effective and humane legalization program and both of them pose unacceptable costs from a civil liberties perspective.

The first option is to do nothing. This would mean that we would continue to have in the United States millions of people who should be entitled to the protection of the Bill of Rights but unable to enjoy those rights. Those who are here without the documentation required by current law are unable to vote or to otherwise participate in the political process; they are unable to call upon the government or the courts to protect them when their political or civil rights are violated by the government, by their employers or by others; they are unable to organize effectively through labor unions and other associations. The ACLU views the continuation of this situation as an intolerable limit on the protections to which all persons in the United States are entitled under our Constitution.

The second option is to seek to identify, apprehend and deport all or most of the undocumented individuals now living in the United States. The consequences of such an effort are so horrendous that it has not been seriously proposed. Finding the individuals to deport would require a process of intrusion into the lives of many Americans and would inevitably result in violation of constitutional rights. Moreover, it would be unjust and inhumane to seek to deport individuals who have been productive and law-abiding members of the community.

Thus we are left with the third option which is an effective and generous legalization program. The ACLU views the enactment of such a legalization scheme as one of the most urgent tasks facing the Congress. We believe that such a program must be consistent with the following principles:

1. All aliens who have continuously resided in the United States since January 1, 1982 should be eligible for the legalization program;
2. all aliens eligible for legalization should be granted permanent resident status and the temporary resident provisions of the bill should be deleted;
3. all legalized aliens granted permanent resident status should be granted the full rights and privileges accorded permanent resident aliens under current law;

4. state and local governments should be provided impact aid, pursuant to an appropriate formula, to assure that the legalization program does not unfairly burden state and local taxpayers in certain areas of the country; and

5. that persons eligible for the program be granted one year from the beginning of the program to apply to legalize their status.

We are prepared to work with this Committee and others in the Congress for the speedy enactment of legislation which embodies these principles. Mr. Chairman, we recognize that any legislation which provides for legalization must as a practical matter contain provisions which would deter employers from simply continuing to hire new undocumented workers.

In the past the ACLU has opposed the sanctions provisions contained in the legislation and we must continue to oppose such procedures. We do so on the grounds that they would lead inevitably to discrimination against some Americans and because it would almost certainly lead to an employee identity card with serious civil liberties consequences. We also believe that the arrangements which have been proposed in the past will simply not work. Those employers who are engaged in the practice of hiring undocumented workers will, we believe, continue to do so. We urge the Committee to consider carefully the evidence as to the effectiveness of this scheme. It is not sufficient to say that sanctions are necessary. A system which will not accomplish its purposes and which at the same time will give rise to discrimination and pose a massive threat to civil liberties is simply unacceptable.

We respectfully suggest that the Committee look to alternatives.

A new approach which we believe merits attention would focus on those employers who engage in a pattern and practice of hiring undocumented workers. Under this approach, it would be unlawful for employers intentionally to hire undocumented workers, but there would be no general requirement for the government to develop--and employers to inspect--a new secure form of identification.

Rather, enforcement would center on firms found to engage in a pattern and practice of intentionally hiring undocumented workers. Any employer cited for such violations would then be required to report any new hiring to the government. Responsibility for enforcing the law would not rest with the INS but rather the officials having experience in enforcing employment laws. This unit would be also charged with insuring that enforcement of the law did not result in unlawful discrimination.

This approach would have the virtue of focusing the immigration enforcement effort on large employers with a clearly established record of employing and exploiting undocumented workers. It would thus eliminate the incentive for all employers to "play it safe" by discriminating against "foreign-looking" workers, and it would encourage large employers to comply with fair labor standards laws in order to avoid being targeted for close scrutiny as a suspected exploiter of undocumented workers.

The ACLU has asked a group of employment discrimination experts to work with us and other interested groups to see if this approach can be translated into a scheme which will actually accomplish the objective and do so without giving rise to discrimination or to a worker identification card. We hope that the Committee will not move forward so quickly as to foreclose careful consideration of this approach.

Finally, there is the issue of asylum adjudication. First, the number of undocumented immigrants in the United States today is estimated by the Senate Report on S. 2222 to a number between 3.5 to 6 million or more. The backlog of asylum cases is 140,000--a very small percentage of the total undocumented population, assuming that all asylum claimants are in the United States, "illegally," eliminating the entire asylum backlog would hardly make a dent in the number of illegal immigrants in the country.

Second, court cases appealing or challenging administrative determinations and procedures are not responsible for the current backlog. As the House Judiciary Committee Report last year concludes:

> "The Committee is convinced that the abolition of judicial review of asylum determination would be unwise. Indeed, the facts support the position that administrative shortcomings, not judicial interference, has caused the enormous backlog in asylum cases. . . . Today, it takes the State Department four months to respond to an INS request for a country condition report. In turn, over 70,000 asylum petitions are currently awaiting decisions by INS. Comparing the number of court cases, one finds that in FY 1981 INS received over 63,000 asylum applications. Yet in that year there were less than 500 court cases challenging exclusion or deportation orders. And of course, the vast majority of those court cases did not involve asylum at all. In short, it would be unfair to blame existing backlogs on the courts."

We believe that the administrative scheme which was embodied in the bill as reported by the House Judiciary Committee last year is a good one which commands wide support. We urge the Committee to give it careful consideration. In addition, we believe that, consistent with the Refugee Act of 1980 and the international treaty obligations of the United States, those who arrive at our shores must be informed of the right to counsel before they are summarily deported. We also believe all existing rights of judicial review must be maintained, including the right of the district courts to hear allegations of pattern and practice violations by the INS without exhaustion of administrative remedies.

We must bear in mind that we are dealing often with poor and confused and frightened people who arrive on our shores without any clear knowledge of their rights. In our haste to deny entry to those who are excluded by our current laws we must not send away those who are genuinely fleeing from political persecution.

Mr. Chairman, attached to this brief statement are three memoranda spelling out our positions on legalization, sanctions, and political asylum in greater detail. We would be pleased to respond to your questions and we look forward to working with you, other members of the Committee and your staffs in seeking to develop a consensus on the vital issue of immigration reform.

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February 25, 1983

MEMORANDUM

TO: Senate Judiciary Committee

FROM: American Civil Liberties Union

RE: Employer Sanctions and Civil Rights

The "Immigration Reform and Control Act of 1983", S. 529, relies on employer sanctions as the central mechanism for deterring the entry of undocumented aliens into the United States.

Section 101 of S. 529 would make it illegal for "a person or other entity. . . to [knowingly] hire, recruit or refer for employment in the United States" any "unauthorized alien," defined as an alien who is neither lawfully admitted for permanent residence in the United States nor authorized to work by the Attorney General. It would also be illegal to hire, recruit or refer such individual without first verifying that individual's work eligibility, and for any person or entity to continue to employ an alien upon learning that the alien is or has been "unauthorized." An employer may establish an affirmative defense to a charge of knowingly hiring, recruiting, or referring unauthorized aliens by demonstrating "good faith" compliance with the bill's requirements for verifying the employment eligibility of such aliens.

During the first three years after enactment of the legislation, verification of employment eligibility would be governed by the bill's "transitional" verification program. Under the transitional program, proof of work eligibility would consist of a valid U.S. passport or one document from each of the following categories:

1. social security card or United States birth certificate; and
2. alien documentation, identification and telecommunications card issued by the Attorney General, driver's license or other state-issued I.D., or any other document approved by the Attorney General for such purposes.

Both the job applicant and the person recruiting, referring or hiring an individual would be required to sign a form, under penalty of perjury, attesting to the individual's work eligibility and to the fact that the person who recruited, referred, or hired the worker examined the requisite documents establishing the individual's work eligibility. However, the employer of three or fewer employees is exempt from the attestation requirement of the bill.

Within three years, the transitional program would be replaced by a "secure" verification system developed under direction of the President. Although the bill gives the President broad discretion to fashion a secure verification system, it also requires that any such system must comply with the following limitations:

1. Personal information utilized by the system shall be available to government agencies, employers, and other persons only for purposes of determining whether an individual is an unauthorized alien;
2. Verification of an individual's work eligibility may not be withheld for any reason other than that the individual is an unauthorized alien;
3. The system may not be used for law enforcement purposes other than for enforcement of the employer sanctions program; and
4. If the system utilizes an employment identification card, the card may not be used for purposes other than determining work eligibility nor can any person be required to carry the card.

The bill essentially proposes a one year moratorium on enforcement (from date of enactment) for suspected violators. During this period expenditures are authorized for public education on the operation of the sanctions program. For the first six months the Attorney General would simply notify any person or entity of suspected violations; during the second six-month period suspected violators would receive a warning for a first offense.

An employer who is charged with a violation under the statute would be entitled to a hearing before an immigration officer designated by the Attorney General. The penalties for violation are a civil fine of $1,000 per unauthorized worker for the first offense, $2,000 per worker for the second offense, and up to $1,000 and six months in prison for three or more violations. In addition, the bill empowers the Attorney General to bring suit in federal district court seeking an injunction or other appropriate relief against an employer who engages in a "pattern and practice" of knowingly hiring, referring or recruiting unauthorized aliens.

Discriminatory Effects of Employer Sanctions

The fear of increased employment discrimination against minority citizens and lawfully admitted aliens is a key objection of the ACLU to the employer sanctions provisions of S. 529. The failure of the legislation to provide an effective remediation scheme and civil rights protections only magnifies the concern.

The employer sanctions provisions would increase employment discrimination on several distinct levels. First, employer sanctions would foster the creation of a de facto "suspect classification" for Hispanics and persons of "foreign appearance." Because the problem of illegal immigration is perceived by many, albeit incorrectly, as a "Mexican problem" or as a problem of Central America and the Carribean Basin, persons who share a common appearance with those from the region will invariably become suspect in the minds of employers. As to these individuals, the sanctions provisions would impose conflicting obligations on the employer which may prove difficult to reconcile: the obligation not to discriminate in hiring on the basis of an applicant's race or national origin; and the new obligation not to hire persons "unauthorized" for employment.

In an effort to minimize the conflict and to avoid the risk of the new obligation, some employers will undoubtedly adopt a simplistic solution of discriminatory exclusion of "foreign-looking" workers. In effect, the sanctions provisions may inadvertantly foster a business incentive to discriminate by making it more "cost effective" to run the risk of employment discrimination, than to run the greater risk of employer sanctions.

Although the proposed transitional verification system purports to reduce the probability of employment discrimination, in practical application, it could engender increased discrimination. This may occur, particularly among small employers who do not wish to take chances with "foreign-looking" job applicants, through the use of more stringent documentation requirements than those imposed by law, or repeated challenges to the authenticity of documentation offered by minority citizens. The transitional verification system will be challenged by employers from the start; were it presumed effective, there would be little justification to support the need for a more "secure identifier". The discriminatory potential in these provisions is more subtle and pervasive than has previously been recognized.

The employer sanctions provisions of S. 529 will also cause law enforcement discrimination. Current INS practices, as documented by the United States Commission on Civil Rights, suggest that workers likely to be considered undocumented would almost exclusively be Hispanics, Asians and blacks.*/ This discriminatory enforcement strategy will have additional undesirable consequences. For example, employers will be disinclined to hire, promote or train persons who may be subjected to disruptive and time-consuming status checks.

The basis of concern over discriminatory enforcement was particularly evident in the results of the INS coordinated enforcement effort known as "Project Jobs". Project Jobs was conducted by the INS in nine cities between April 26-30, 1982. Investigations focused on locating illegal aliens who were employed in better paying jobs which might be attractive to unemployed citizens

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*/ According to the Report of the U.S. Commission on Civil Rights, *The Tarnished Golden Door, Civil Rights Issues in Immigration*, 85 (1980), current INS investigations are conducted in a highly discriminatory manner. When INS agents conduct factory raids, they interrogate individuals solely on the basis of their skin color or ethnic appearance.

and permanent resident aliens. Nearly all of the approximately 5,500 persons arrested and detained by the INS were from Latin American and Carribean countries. Approximately 4,900 of these individuals were Mexican nationals, while only one person each came from countries such as Canada, the United Kingdom and Australia. None were reported to be from other European countries.

Does this data suggest that there are no "illegals" from these countries in "high paying" jobs here in the United States? The background studies of the Select Commission on the sources of undocumented migration clearly refute this supposition. However, what the data may suggest instead is racial, geographic or industry-related targeting of enforcement by the INS. Such generalized "targeting" without benefit of warrant, consent, or exigent circumstances, invariably has a discriminatory impact on the Fourth and Fifth Amendment rights of minority citizens and permanent resident aliens; see Blackie's House of Beef, Inc. v. Castillo, 659 F.2d 1211 (D.C. Cir. 1981); see also, United States v. Cruz, 581 F.2d 535 (5th Cir. 1978).

In addition to encouraging discriminatory enforcement tactics by INS agents, the employer sanctions program would separately increase the incidence of discriminatory law enforcement abuses by local police officers. The program would create strong incentives for local police to routinely stop Hispanics and other minorities and demand proof of their citizenship or immigration status. Despite their inability to make accurate determinations of immigrant status, local police are heavily involved in the enforcement of immigration laws, largely because of prompting from the INS. As a result of the programs, American citizens of foreign ancestry, even though not suspected of committing any crimes, would be exposed to repeated harrassment at the hands of local police. This would likely occur, notwithstanding the limitations on the use of the verification system proposed in the bill.

There are numerous examples of local police who systematically make investigative stops and arrest solely on the basis of racial and ethnic characteristics. In The Tarnished Door, Civil Rights Issues in Immigration, 91 (1980) the United States Commission on

Civil Rights graphically describes one instance of abuse. In Moline, Illinois the city police department instituted a practice whereby its officers would enter local neighborhood establishments and interrogate persons of Latin ancestry about their status in the United States, although the overwhelming majority of those interrogated were United States citizens or legal resident aliens. The lack of sophistication and careless attitudes of many local law enforcement officers is illustrated by a trial transcript quoted at page 92:

> Q. Now is this the normal routine that you follow when you arrest Mexicans in Grand Praire?
>
> A. Are you speaking of an illegal alien or a Mexican?
>
> Q. Well, how can you tell the difference? Do you know what the difference is?
>
> A. No, sir. When I can't determine, that's why I put them in jail for investigative charges.

Inadequacy of Civil Rights Protections

There are additional practical barriers within the bill in the protection of civil rights. The documentation requirements of the legislation apply only to persons actually hired, and employers of three or fewer persons are exempt from employee verification requirements. Discrimination which may occur in the employee selection process could readily be covered by a subsequent screening of all employees actually hired thereby making a charge of intentional discrimination difficult to establish.

The effectiveness of available civil remedies for discrimination is illusory. Existing Title VII and EEOC enforcement efforts would be inadequate as a remedy for employment discrimination which may arise:

1. Title VII of the Civil Rights Act applies only to employers of 15 or more employees and to individuals employed for 20 months or more. Those applicants who suffer discrimination, but who apply for jobs with employers of fewer than 15 workers or who are seasonal employees, will have no effective remedy available;

2. The backlog in processing Title VII complaints within the EEOC, coupled with present budgetary constraints on civil rights enforcement by the Justice Department, will invariably affect the willingness of aggrieved persons to utilize the system, which, at best, will be protracted over many months;

3. For the individual, civil rights litigation can be cost prohibitive. Recent cutbacks in the budget of the Legal Services Corporation, coupled with congressional restrictions on the representation of aliens, will make for greater difficulty in pursuing judicial remedies.

There is an additional factor which tips the employer sanctions scheme of S. 529 toward discrimination and away from equal protection. The Supreme Court has held that Title VII does not prohibit discrimination by private employers on the basis of alienage. Espinoza v. Farah Manufacturing Co., Inc., 414 U.S. 86 (1973). Although Title VII renders national origin an unlawful basis of discrimination, the Court refused "to interpret the term 'national origin' to embrace citizenship requirements," and declined to find congressional intent to make discrimination against aliens in private employment unlawful.

The Supreme Court's decision in Espinoza means that Hispanics who are not citizens can be discriminated against under Title VII to the extent that the discrimination is based on requirements of U.S. citizenship. Thus, while Title VII's prohibition against national origin discrimination does bar discrimination against Hispanics in general, it does not bar an employer from denying employment to persons not believed to be citizens. This could provide an additional basis for camouflaging an intent to discriminate.

The future requirement of a presidential report to Congress on the discriminatory impact of employer sanctions offers little comfort. First, it has no direct impact on preventing actual discrimination in the workplace. Secondly, the report is not tied to any explicit future action by Congress to remedy the ill-effects which may be reported.

Employer Sanctions and Privacy

It has been suggested that both to avoid discrimination and to be effective, any new employer sanctions program must rely on a comprehensive work-eligibility verification system; it is argued that requiring all employees to provide "one-time-only" documentation of eligibility to work will reduce the temptation of employers to selectively discriminate based on the general appearance of the job applicant. Concerns that such a verification system could pose risks to liberty and privacy have been rejected by some as insubstantial. Because of their belief that employer sanctions are vital to the control of illegal immigration, proponents of the verification scheme are prepared to accept a new national information reporting system, with "appropriate restrictions" on its future use, as a cost incidental to the operation of an effective sanctions program.

However, the ACLU remains deeply concerned about the implications of the proposed verification system. In recent years we have taken a special interest in the issue of privacy as it relates to the maintenance and dissemination of personal information, with particular focus on the centralization of personal data by the federal government and the development of the Social Security number as a "universal identifier."

Every new use of the Social Security number is aimed at the creation of a reliable mechanism for personal identification. One approach is the development of a counterfeit-resistant identity document, such as an improved version of the Social Securit ard. Presumably, such a document would contain the bearer's photograph, signature, perhaps other identifying data, and a code indicating the bearer's citizen or alien status--all verified by information in government databanks. It would have to be physically tamper-proof--for example, manufactured of materials that would shatter if an attempt were made to substitute another photograph or alter any of the data.

A different approach would dispense with the need for an identity document, such as a tamper-proof social security card, relying instead on a government databank of personal information filed under individual social security numbers. Users would submit forms on each person of interest, to be screened by government officials against records in the databank.

How does the growing use of the Social Security number as a universal identifier in the context of immigration reform threaten the right of privacy? First, in the case of an identity document, by creating a domestic passport implementing the government's already broad police power to stop, question, and search. Second, by creating what amounts to a national population registry, a government databank through which every individual's personal identity is established and validated. Third, through the certainty that this databank will begin to be used to further a variety of public programs and policies, and thereby become both an enormous repository of personal information and a means of tracking and controlling the lives of American citizens. And fourth, through the use of the Social Security number, by establishing a universal identifier that facilitates the matching and exchange of data among many different governmental and private record systems.

These are not merely projections of remote possibilities. Existing laws and record-keeping practices have already brought us perilously close to each of these eventualities.

The Social Security Card as an Internal Passport

The greatest danger of the growing number of mandated uses of the Social Security card as an identity document is that it tends to become a form of domestic internal passport. Certainly no one intends this result, and proponents of the identity card believe that they can take steps to prevent it. What they may not fully realize, however, is that the government's police powers to stop and search are already sufficient to transform the identity document into a major threat to privacy, freedom of movement and equal protection of the laws.

A look at some Supreme Court decisions over the last decade will illustrate the point. In two 1973 decisions, the Court ruled that an officer arresting a motorist for driving without a license or with a revoked license may search both the motorist and the vehicle. United States v. Robinson, 414 U.S. 218 (1973); Gustafson v. Florida, 414 U.S. 260 (1973). In both cases the search was precipitated by the motorist's failure to carry a valid document. Although six years later the Court struck down random spot checks of drivers' licenses and registrations, Delaware v. Prouse, 440 U.S. 648 (1979), it distinguished such searches from those conducted at U.S. borders or at specific checkpoints within the country. The Court has sustained document inspections at border checkpoints and their "functional equivalents," Almeida-Sanchez v. United States, 413 U.S. 266 (1973), United States v. Martinez-Fuerte, 428 U.S. 543 (1976), and stops by roving patrols for "reasonable suspicion" based on the physical appearance of the occupants of a car, United States v. Brignoni-Ponce, 422 U.S. 873 (1975).

In these cases and others in the lower courts, the police power has been defined as allowing government agents to stop individuals without any particular suspicion of a crime, to request identification, and to search, detain, or arrest people who cannot produce proper documents. The Supreme Court decisions just described are directly pertinent to proposals for turning the Social Security card into a national identity document. Since police powers to stop and question people to check identification are already very broad, a national identity document would serve as a blanket invitation for the police to exercise these powers frequently and to their fullest extent, at the expense of individual privacy.

Creating a Population Registry

With or without an identity card, a national databank of personal information will result from the growing use of Social Security numbers for identification purposes.

If such a databank is truly to serve as a reliable means of checking identification, it must contain current, verified personal information on each data subject. In addition to the Social Security number and other items commonly used to establish identity (date and place of birth, sex, former names, parents' names, etc.), this information would probably include a physical description such as height, coloring, and race, perhaps some unique identifier such as a signature or photograph or even fingerprints, and a notation of status as a citizen or alien with permission to work.

The history of automated data systems over the last two decades shows clearly that:

*large personal data systems are nearly always adapted to purposes other than their originally intended uses, and

*techniques for the electronic matching and pooling of data in separate systems have created many of the characteristics, if not the physical actuality of a national dossier system.

One might list, almost at random, dozens of examples of new uses for once-restricted data system:

*As mentioned earlier, Social Security Administration files are used to identify "illegal aliens." See also, Social Security Administration request for a "New Routine Use" exception to the requirements of Privacy Act of 1974, Federal Register, Vol. 48, No. 32, 2/15/83.

*The Parent Locator Service, established pursuant to Title IV-D of the Social Security Act, allows child support enforcement officials to search "confidential" government and private record systems in order to trace absent parents who owe child support.

*Numerous state laws allow or actually require public and private employers to query criminal history databanks, compiled originally for police use, in order to screen out applicants convicted of certain crimes, or simply to ascertain if applicants have arrest records.

*Internal Revenue Service records are checked to screen prospective jurors and to locate non-registrants for a military draft.

*The Veterans Administration and the Department of Health, Education and Welfare have matched their records against federal payrolls to find VA and student and loan defaulters.

*The records of hundreds of federal and state public assistance programs have been matched against each other and against public and private employment rolls, to identify people receiving multiple benefits or benefits for which they are ineligible because of their earnings. Some states, such as New York and California, have even set up special wage reporting systems to make data on earnings more easily available for inter-agency matches.

*In many states, detailed case records from publicly funded services such as mental health clinics, family planning programs, and services for handicapped children have been pooled in comprehensive "human services" or "family services" databanks, where they are used for a variety of purposes from fraud control to eligibility determinations to case management review.

*Banks are required by law to preserve their customers' records much longer than they are needed solely in order to assure their availability for government investigations.

*Apparently, we will soon see the implementation of current proposals for giving data from government records to credit reporting agencies in order to help the government recoup bad debts, for compiling Selective lists from Social Security and Internal Revenue Service records, and for pooling information on all federal assistance recipients into a single national benefits recipients databank.

Such examples as these do not constitute a "parade of horribles": it is not necessary to cite abuses like the violation of Census Bureau confidentiality during World War II to help the War Department find Japanese-Americans, or the political manipulations of tax and other government records that were exposed during Watergate. Many of these expanded uses are for purposes that most people would find at least rational, perhaps commendable. They demonstrate that personal data systems are useful for a wide variety of purposes beyond their originally intended parameters, and that such systems will, inevitably, be adapted to new purposes in accordance with developments and changes in public policy.

There is no reason to believe that a population registry would not follow the same course. For example, a databank already used to determine eligibility for employment on grounds of citizenship or alien status could easily be adapted to implement existing laws restricting the employment of convicted felons for certain kinds of jobs; such convictions could simply be coded into the system's database. The databank could also be useful in efforts to combat welfare fraud. If the database were expanded to include a notation of status as a welfare recipient, then the databank could automatically report the hiring of such persons to the appropriate welfare agency as a signal for cutting off benefits, and matches of the databank against various public assistance program rolls would simplify the identification of ineligible welfare recipients. If the registry contained identifiers such as photographs or fingerprints, it could be useful in apprehending criminal fugitives. It could also be an invaluable asset to the Parent Locator Service.

Through these and similar adaptations, a national population registry would unquestionably become, as an HEW Advisory Committee predicted a decade ago, a national dossier system.

Recommendations and Conclusions

In the past the ACLU has opposed the sanctions provisions contained in the legislation and we must continue to oppose such procedures. We do so on the grounds that they would lead inevitably to discrimination against some Americans and because they would almost certainly lead to an employee identity card with serious civil liberties consequences. We also believe that the arrangements which have been proposed in the past will simply not work. Those employers who are engaged in the practice of hiring undocumented workers will, we believe, continue to do so.

We urge the Committee to consider carefully the evidence as to the effectiveness of this scheme. It is not sufficient to say that sanctions are necessary. A system which will not accomplish its purposes and which at the same time will give rise to discrimination and pose a massive threat to civil liberties is simply unacceptable.

We respectfully suggest that the Committee look to alternatives.

A new approach which we believe merits attention would focus on those employers who engage in a pattern and practice of hiring undocumented workers. Under this approach, it would be unlawful for employers intentionally to hire undocumented workers, but there would be no general requirement for the government to develop--and employers to inspect--a new secure form of identification. Rather, enforcement would center on firms found to engage in a pattern and practice of intentionally hiring undocumented workers. Any employer cited for such violations would then be required to report any new hiring to the government. Responsibility for enforcing the law would not rest with the INS but rather the officials having experience in enforcing employment laws. This unit would be also charged with insuring that enforcement of the law did not result in unlawful discrimination.

This approach would have the virtue of focusing the immigration enforcement effort on large employers with a clearly established record of employing and exploiting undocumented workers. It would thus eliminate the incentive for all employers to "play it safe" by discriminating against "foreign-looking" workers, and it would encourage large employers to comply with fair labor standards laws in order to avoid being targeted for close scrutiny as a suspected exploiter of undocumented workers.

The ACLU has asked a group of employment discrimination experts to work with us and other interested groups to see if this approach can be translated into a scheme which will actually accomplish the objective and do so without giving rise to discrimination or to a worker identification card. We hope that the Committee will not move forward so quickly as to foreclose careful consideration of this approach.

Pending the submission of the working group's recommendation, the ACLU offers the following preliminary suggestion. Assuming that imposting new legal obligations on employers will be part of any legalization program, the proposal should be designed to meet the following criteria:

*A new criminal statute should make it a crime to intentionally hire undocument workers.

*There should be no requirement that all (or most) employers examine worker identification to determine that the worker is authorized to work in the U.S.

*The specific structures and procedures set up to monitor compliance should be focused equally on enforcing laws against discrimination and the new law against hiring undocumented workers.

*Responsibility for administrative enforcement should rest with the Department of Labor, the Department of Justice, a combined task force of these two Departments or a new agency. It should not be given to INS.

*Enforcement should focus on employers who engage in a pattern and practice of violating the law by hiring undocumented workers.

*Those found by an administrative ruling to be engaged in a pattern and practice of illegal action should be subject to hiring verification and reporting procedures and administrative review designed to insure equally that the employer does not discriminate and does not hire undocumented workers.

*There should be a procedure for a complaint to be brought administratively by workers, a union, or others alleging a pattern and practice of violation. Recourse to the courts should be available if the agency declines to act on a complaint.

*Specific penalties should apply only to violations which occur after the special procedures (outlined above) are put in place against an employer.

We note with approval the general tenor of Part B, Sec. 111 of the bill which provides congressional endorsement for a "controlled and closely monitored increase in the level of the border patrol and of other appropriate enforcement activites of the Immigration and Naturalization Service to achieve an effective level of control of illegal immigration." As long as constitutional safeguards are followed at the border, such a recommendation from Congress (coupled with a meaningful level of appropriation) is a significant step toward effective control over the nation's borders.

In our view, such a recommendation for balanced border enforcement should be accompanied by an additional enforcement recommendation of the Select Commission, which urges "the increased enforcement of existing wage and working standards legislation. . . [and] supports the necessary increases in budget, equipment and personnel that will allow the Department of Labor's Employment Standards Administration. . . to increase its efforts to monitor the workplace." Commission Report, II, B.2 at 70-71.

The Employment Standards Administration (ESA) is empowered by statute to restore back wages to persons who were paid below the federal minimum wage. Under the ESA program investigations are conducted against employers thought to be using undocumented workers. The object of these investigations is to make low wage employers aware that the minimum wage law is being enforced, and that it is being enforced with particular diligence on those known, or reasonably believed to be employing illegal aliens. Since such enforcement will impose on the employer the costs which he seeks to avoid by violation of the labor and working standards laws, his incentive to hire undocumented workers will be significantly reduced. Such an enforcement system would be more cost-effective than implementing employer sanctions and a work identification system, since it would be cheaper to use agencies already in place than to institute an entirely new and expensive system. More importantly, however, the increased enforcement of present wage and safety laws would not involve the widespread discriminatory impact and civil liberties erosion that appears to be inherent in an employer sanctions program coupled with a national work identification system.

If these provisions are tied to a "sunset" provision requiring Congress to affirmatively reauthorize employer sanctions statutes and to the creation of a Select Commission to further study the efficacy of employer sanctions provisions, the discriminatory effects of sanctions will be reduced.

February 25, 1983

MEMORANDUM

TO: Senate Judiciary Committee

FROM: American Civil Liberties Union

RE: Civil Liberties and the Undocumented Alien: The Case for Legalization

> "The existence of a large illegal migrant population within our borders violates the basic concept that we are a nation under law and this cannot be tolerated. The costs to society of permitting a large group of persons to live in an illegal status are enormous. Society is harmed every time an undocumented alien is afraid to testify as a witness in a legal proceeding -- which occurs even when the alien is the victim -- to report an illness that may contribute a public health hazard or disclose a violation of U.S. labor laws." 1/

The plight of the undocumented/illegal alien poses one of the most difficult dilemmas in the debate over immigration reform. Variously estimated at between 3.5 and 6 million persons, and growing at an annual rate of one-quarter to one-half million new individuals, 2/ the existence of a large and expanding "shadow class" of persons outside the law presents major contradictions for a democratic society. In practical terms, the solution to the problem will involve significant economic and political considerations. Moreover, it will also involve an important rights and liberties dimension.

The inability of the undocumented alien to avail himself of the law's protections for fear that its punishments will also be felt in the form of swift deportion from the United States, has created a class of persons for whom basic civil liberties and civil rights have little meaning.. Yet, because of their seamless involvement in critical economic and social aspects of American life, the exclusion of undocumented aliens from the body politic also has a corrosive impact on rights and liberties of citizens and permanent resident aliens; immediate examples come to mind within the criminal justice system, labor-business relationships, public education and public health areas. The resolution of the dilemma of the undocumented alien has become one of the major civil liberties issues of our time.

The problem of illegal migration to the United States is complex. The Select Commission on Immigration and Refugee Policy characterized the problem as the single most pressing issue it faced during its deliberations. For the undocumented alien, the benefits of migration to the United States usually distill into basic and compelling considerations: opportunities for employment, family reunification, excercise of individual freedoms not permitted at home, and for some, escape from political persecution. The United States remains a magnet for both economic and political refugees, an historical fact dating back to the founding of the country.

In seeking a solution to the present undocumented alien problem, policy-makers have concluded that only three realistic options exist. Diego C. Asencio, Secretary for Consular Affairs, Department of State presented the considerations most bluntly 3/:

> Careful analysis shows that there are three, and only three possible courses of action to deal those who are already here: (1) ignore the situation allowing illegals to remain in their current status because of inadequate enforcement of present law while their numbers grow; (2) massively round up and deport those here illegally; and (3) devise a procedure through which to legalize those who have established themselves in the United States.

The first option would prove destructive in the long-term; the second option would prove wholly unacceptable on civil liberties grounds. As the Select Commission noted, attempts at massive deportation would be destructive of domestic liberties, costly, likely to be challenged, and in the end, ineffective.

The last time in United States history when such a massive deportation effort occurred was in the mid-1950s when the Immigration and Naturalization Service (INS) expelled or deported more than one million aliens. This was done at tremendous costs in terms of both money and personnel. More importantly, it violated the civil liberties and rights of many Mexican Americans who were rounded up illegally for forcible reparation to Mexico. Such an effort would not be tolerated today.

Hence, legalization -- accompanied by a more effective enforcement mechanism -- is the only viable solution for the undocumented alien population. Legalization of the undocumented is not an "amnesty" as is often implied. The thrust of the proposal is guided by principles supporting the rule of law, not "forgiveness" of the illegal alien.

Through a legalization program, the government seeks:

- To eliminate the illegal subclass now present in the United States, a situation which results in the exploitation of this segment of society and the depression of U.S. wages and working conditions.

  Qualified aliens would be able to contribute more to U.S. society once they come into the open. Most illegal aliens are hard-working, productive individuals who already pay taxes and contribute their labor to this country. Any adverse impact of their presence in the economy has already been absorbed;

- To concentrate the limited enforcement resources of the Immigration and Naturalization Service on new illegal entry or visa abuse.

  Legalization would enable the INS to target its enforcement resources on new flows of illegal aliens, and avoid devoting limited investigative resources to cases which involve aliens who claim equities under the law; and

- To allow dependent employers to continue to use this labor force lawfully. 4/

Legalizing the undocumented alien advances the protection of civil liberties and civil rights.

Civil liberties interests can be found in at least two elements of the supporting rationale for a broad legalization program. One major interest involves the broad concept of equality before the law. Another interest involves the right to freedom of belief, expression and association in the context of labor-business relationships.

Affirmative Civil Liberties Interest in Promoting Equitable Access to Public Benefits for Undocumented Aliens

The right of aliens to receive various kinds of public benefits is in flux. For aliens who are "lawfully admitted for permanent residence," the trend is clearly, although not absolutely, to strike down the barriers against their right to receive government benefits at the state level. The primary vehicle for this effort has been the Equal Protection Clause of the Fourteenth Amendment. In Sugarman v. Dougall, 413 U.S.634 (1973), the Supreme Court invalidated on equal protection grounds a New York law restricting lawful resident alien participation in certain benefit programs. But, in Graham v. Richardson, 403 U.S. 365 (1972), the Court upheld similar restrictions on federal programs. The Court reasoned that because the Constitution grants the Congress plenary authority in immigration matters, it enjoys greater latitude than the states in regulating the presence of resident aliens.

For aliens who are in the United States illegally, the statutes and policies are mixed. The right to certain governmental benefits - for example, police and fire protection - seems axiomatic with the constitutional protection of life, liberty and property. So too would the right of an indigent alien to receive life-saving benefits such as emergency hospitalization and medical treatment, generally provided by local governments. In recent decisions the Court has further extended the protections of the Equal Protection Clause by requiring access to publicly financed education for the children of illegal aliens, Plyer v. Doe, 457 U.S. ____, 50 U.S.L.W. 4650 (June 15, 1983). In Plyer the Court made clear that undocumented aliens are "persons" within the meaning of the Fourteenth Amendment:

> Appellants argue at the outset that undocumented aliens, because of their immigration status, are not "persons within the jurisdiction" of the State of Texas, and that they therefore have no right to the equal protection of Texas law. We reject this argument. Whatever his status under the immigration laws, an alien is surely a "person" in any ordinary sense of that term. Aliens, even aliens whose presence in this country is unlawful, have long been recognized as "persons" guaranteed due process of law by the Fifth and Fourteenth Amendments. Shaughnessy v. Mezei, 345 U.S. 206, 212 (1953); Wong Wing v. United States, 163 U.S. 228, 238 (1896); Yick Wo v. Hopkins, 118 U.S. 356, 369 (1886). Indeed, we have clearly held that the Fifth Amendment protects aliens whose presence in this country is unlawful from invidious discrimination by the Federal Government. Mathews v. Diaz, 426 U.S. 67, 77 (1976).

The analysis extending state benefits to a resident alien or undocumented alien population has so far generally not been followed by the Congress. Thus, Congress has restricted or otherwise regulated the access of undocumented aliens to various public benefits sponsored by the federal government, including food stamps (see, Food Stamp Act Amendments of 1980, 7 U.S.C. Sec. 2015(f) and 7 C.F.R. Sec. 273.4); indigent legal services representation (see, Continuing Resolution H.J. Res. 599, Oct. 1, 1982); school lunches (Omnibus Budget Reconcilliation Act of 1981, P.L. 97-34, Sec. 803); and Aid For Dependent Children (AFDC) programs (Social Security Act, Sec. 402(a), 42 U.S.C. Sec. 602(a) (33), as amended by the Omnibus Budget Reconcilliation Act, P.L. 97-34, Sec. 2320).

These restrictions reflect a congressional intent to restrict social benefits to persons who are citizens or who entered the country legally. The only implication one may draw from these restrictions is that the Congress believes that undocumented aliens contribute little in taxes to support the general economy and/or is a drain on services disproportionate to their contribution.

The evidence from studies prepared for the Select Commission refutes both suppositions. This research suggests that there is generally low use of social services by undocumented aliens for reasons such as those previously mentioned, as well as fear of deportation if the alien applies for the program. Moreover, these same studies suggest that payment of federal and/or state taxes by undocumented aliens "may more than offset the cost of providing health care and other social services."5/ The denial of benefits necessay to the basic sustenance of life of some persons, while comparable benefits are afforded by government to others, has constitutional significance insofar as the requirements of equal protection and due process are concerned.

Affirmative Civil Liberties Interest in Resolving Effects of Undocumented Aliens on the Labor Market

The impact of undocumented migration on the labor market is of major importance in 1) the displacement of U.S. workers, 2) depression of wages and working standards, and 3) curtailment of the enforcement of fair labor standards legislation.

Protected aspects of freedom of association such as the right of employees to organize and bargain collectively and the right to strike over disputes concerning terms or conditions of employment are profoundly affected by a large, exploitable sub-group in the work force. Surely the rights of legal workers are affected when the undocumented status of fellow workers and their fear of deportation, inhibit the excercise of otherwise protected rights.

What are the consequences of this denial of rights? While not all undocumented aliens experience abuse, most experts agree that serious problems exist. An undocumented alien who testified at a Select Commission hearing described his experience:

> They say that because we do not have U.S. papers we are not entitled to protection by the U.S. Constitution. Because of this we are often paid low wages and are forced t live and work in subhuman conditions. In Florida we work carrying 100 pound bags up ladders that are sometimes 20 feet high. If we fall from a ladder or are otherwise injuried on the job we rarely receive workmen's compensation. Many undocumented worker in Florida live in small house trailers that accommodate more than 20 workers, and often pay high rent for such living space. 6/

Difficult conditions, however, are also found in many urban settings. A labor leader at another Commission hearing described conditions in the New York garment industry:

> During the last year our organizers have located over 500 small, nonunion garment shops in the Bronx, the second smallest borough of New York City. Additionally they found over 200 small shops in Manhattan, and they estimate that there are several hundred more in Brooklyn and Queens. Conditions in these shops vary somewhat, but in virtually all of them, workers are paid poorly, and the work environment is far from humane. Minimum hourly wages and nonexistent.... Homework, the scourge of our industry 70 to 80 years ago, has returned with a vengeance.... Basic health and safety standards are completely neglected in the new sweatshops. 7/

The differential in wages between the home countries of most undocumented/illegal aliens and the United States may make these aliens less concerned than their citizen counterparts about the actual level of their U.S. wages. The potential threat of apprehension and deportation may also make undocumented/illegal workers more willing to work for lower wages. At the

Select Commission hearing in Los Angeles, a representative of the International Ladies Garment Workers Union (ILGWU) told of instances where employers, whom he cited specifically, used the Immigration Service to intimidate workers:

> Daisy of California: A supervisor spreads a rumor of a possible INS raid. Out of a work force of 130, only six remain working. Several days later, company announces a pay reduction and erosion of benefits.
>
> High Tide: A strike occurs. INS arrives and 17 pickets are apprehended, detained and , by evening, deported.
>
> California Sample: One hour before another federal agency, the National Labor Relations Board, is to conduct an election, INS van parks near dock within full view of employees as company spokesman speaks of impending INS raid.
>
> Hollander Manufacturing: Three days after an election in which the company lost, INS raids the plant picking up all union supporters. Retaliation or coincidence? When questioned, INS produces a letter on company stationery requesting the raid. 8/

Although it should again be noted that not all employers of undocumented/illegal aliens are guilty of such practices, abuses of working conditions and wages do exist. 9/

Recommendations and Conclusion

The ACLU views the enactment of a legalization scheme as one of the most urgent tasks facing the Congress. We believe that such a program must be consistent with the following principles:

1. All aliens who have continuously resided in the United States since January 1, 1982 should be eligible for the legalization program;
2. all aliens eligible for legalization should be granted permanent resident status and the temporary resident provisions of the bill should be deleted;
3. all legalized aliens granted permanent resident status should be granted the full rights and privileges accorded permanent resident aliens under current law;
4. state and local governments should be provided impact aid, pursuant to an appropriate formula, to assure that the legalization program does not unfairly burden state and local taxpayers in certain areas of the country; and
5. that persons eligible for the program be granted one year from the beginning of the program to apply to legalize their status.

We are prepared to work with the Congress for the speedy enactment of legalization which embodies these principles.

The long-term consequences of a growing undocumented alien population seem clear:

- Institutionalization of a double standard of due process and equal protection for a growing alien population, with concomitant litigation growing out of that contradiction;
- Growing disrespect for the legal system generally, and a specific lack of regard for an immigration law which penalizes those who obey it and wait their turn to enter the United States;
- Displacement of U.S. workers, whether actual or perceived, would become stronger among those most directly affected -- the young, relatively unskilled racial minority populations -- exacerbating ethnic tensions and employer discrimination and
- Dilution of the entitlement to government benefits and to voting representation for communities in which large numbers of the undocumented may reside, but where their numbers cannot be counted for purposes of determining a community's "fair share" of these benefits.

For all of these reasons, fair and effective measures should be adopted to curtail the settlement of new persons in this class and to alleviate the existing backlog of undocumented aliens. Given the limited number of viable options available for resolving the backlog, it is in the national interest and consistent with civil liberties objectives to support a broad legalization proposal as a crucial element of immigration reform.

FOOTNOTES

1. Legalization of Illegal Aliens, 1981: Hearings before the Subcommittee on Immigration and Refugee Policy of the Senate Committee on the Judiciary, 97th Cong., 2nd sess. p.7 (statement of Doris M. Meissner, acting Commissioner, Immigration and Naturalization Service, Department of Justice, October 29, 1981)

2. "The number of illegal aliens already in the country is unknown. The Select Commission on Immigratin and Refugee Policy uses the figure of 3.5 to 6 million as the best guess of 1978." U.S. Congress, Senate, Report of the Committee on the Judiciary, U.S. Senate on S. 2222, S. Rept. -485, 97th Congress, 2nd Sess., 1982. p.4

3. Legalization of Illegal Aliens, 1981: Hearings before the Subcommittee on Immigration and Refugee Policy of the Senate Committee on the Judiciary, 97th Congress, 2nd Sess. p. 17 (Statement of Diego C. Asencio; assistant secretary for Consumer Affairs, Department of State, October 29, 1981)

4. U.S. Congress, Senate, Report of The Committee on the Judiciary, U.S. Senate on S. 2222, S. Rept. 485, 97th Congress, 2nd Sess., 1982, p. 19 (citation refers to underlined passages).

5. Fred Arnold, "Providing Medical Services to Undocumented Immigration: Costs and Public Policy," International Migration Review 13 p. 711 (Winter 1979)

6. Anonymous undocumented/illegal alien, unpublished testimony, public hearing before the Select Commission on Immigration and Refugee Policy, Miami, December 4, 1979.

7. Jay Masur, unpublished testimony, public hearing before the Select Commission on Immigration and Refugee Policy, New York, New York, January 21, 1980.

8. Phil Russo, unpublished testimony, public hearing before the Select Commission on Immigration and Refugee Policy, Los Angeles, February 5, 1980.

9. Forbes, Susan, "The Half-Open Door: Illegal Migration to the United States" in U.S. Immigration Policy and the National Interest, Staff Report of the Select Commission on Immigration and Refugee Policy, April 30, 1981 pp. 540-551

See also, Fred Arnold, "Providing Medical Services to Undocumented Immigration: Costs & Public Policy," International Migration Review 13 (Winter 1979)

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MEMORANDUM Feb. 25, 1983

TO: Senate Judiciary Committee

FROM: American Civil Liberties Union[1]

RE: Immigration: Asylum, Exclusion, and Deportation

Introduction:

This memorandum sets forth the ACLU's concerns regarding the Asylum, Exclusion, and Deportation provisions of the "Immigration and Control Act of 1983"(S. 529). Two other memorandums set forth our concerns regarding the employer sanctions and legalization provisions of the legislation.

Overview:

The ACLU supports reform of the current administrative and judical process for determining the bona fides of aliens seeking entrance to the United States. We recognize that the current process is cumbersome and inefficient and that the growing administrative backlog of asylum cases is both a burden on the government and on those entitled to asylum who are forced to wait, ofen held in custody, for determinations to be made in their cases.

However, we remain deeply troubled by the thrust of the asylum, exclusion, and deportation sections of S.529 (sections 121 through 124) which attempt to achieve administrative efficiency at the expense of an alien's right to a fair hearing on his immigration status and judicial review of that determination.

Asylum claims are literally matters of "life or freedom." No administrative burden or backlog of cases can justify summary exclusion or truncated administrative or judicial review in cases involving persons who may be threatened "on account of race, religion, nationality, membership in a particular social group, or political opinion" if returned to his home country and is therefore entitled under our law to asylum.[1]

---

1. Prepared by Jerry J. Berman and Morton H. Halperin. Contact for further information.

This law includes our treaty obligations to refrain from refoulement under Article 33 of the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, a treaty to which we became a party in 1968.[2]

Most distressing, the underlying rationale for curtailing due process rights in asylum cases is the a twin set of assumptions (a) that clearing the current backlog of cases will contribute significantly to the "control" of illegal immigration and (b) that court cases brought under current law which the bill seeks to bar have created the backlog. Both assumptions are demonstrably untrue.

First, the number of undocumented immigrants in the United States today is estimated by the Senate Report on S.2222 to number between 3.5 to 6 million or more.[3] The backlog of asylum cases is 140,000--a very small percentage of the total illegal population assuming that all the asylum claimants are in the United States "illegally".[4] Eliminating the entire asylum backlog would hardly make a dent in the number of illegal immigrants in the country.

Second, court cases appealing or challenging administrative determinations and procedures are not responsible for the current backlog. As the House Judiciary Committee Report last year stated:

> The Committee is convinced that the abolition of judicial review of asylum determination would be unwise.Indeed, the facts support the position that administrative shortcomings, not judicial interference, has caused the enormous backlog in asylum cases....Today, it takes the State Department four months to respond to an INS request for a country condition report.In turn, over 70,000 asylum petitions are currently awaiting decision by INS.Comparing the number of court cases, one finds that in FY 1981 INS received over 63,000 asylum applications. Yet in that year there were less than 500 court cases challenging exclusion or deportation orders.And of course, the vast majority of those court cases did not involve asylum at all. In short, it would be unfair to blame existing backlogs on the courts.[5]

The court cases not only do not justify curtailing due process rights. They underscore the need for more protection of those rights. The "pattern and practice" lawsuits which the legislation seeks to curtail would not have resulted in lengthy and burdensome litigation if the INS had not systematically violated the due process rights of aliens, including failure to seriously consider the claims of asylum applicants, denial of effective assistance of counsel, failure to notify applicants of their rights under the law, and failure to afford aliens fair and impartial hearings. See,e.g., Haitian Refugee Center v. Civiletti, 503 F. Supp.442 (S.D.Fla. 1980), modified on other grounds, 676 F.2d 1023 (5th Cir. 1982);Laissez-Moi Vigile v. Sava, Nos. 81 Civ. 7372,7371(RIC), (S.D.N.Y., March 5, 1982);Orantes-Hernandez v. Smith, 541 F. Supp. 351 (C.D.Calif.1982).

Finally, the Senate Judiciary Committee Report appears to justify its "expedited" procedures on the grounds that a "significant portion of these persons (who make up the backlog) may be 'economic migrants' and thus not legally qualified for asylum." [6] Not only does this prejudge the cases, but it erroneously suggests that the backlog consists of Haitians and others fleeing primarily from economic hardships. Yet significant numbers of asylum applicants come from countries where strong cases may be made for refugee status. For example, INS figures show that 3,388 come from Poland; 12, 636 from Nicaragua, 925 from Afghanistan; 369 from Hungary; 325 from the Philippines; 432 from Romania; and 18,921 from Iran.[7]

In sum, it is unwise, unjustifiable, and unnecessry to handle the asylum backlog by curtailing fundamental due process rights. Below, we will argue for restoring those rights and will offer amendments to accomplish this end. At the same time, we will strongly recommend the adoption of the adminstrative reforms contained in the original version of S.2222 last year, which were in large measure adopted by the House Juduciary Committee, as the most effective way to handle the asylum, exclusion issue. Combined with the "temporary status" provisions for Hatians and Cubans who make up almost half the current backlog of cases and the hiring of additional administrative personnel, we believe streamlining can be achieved without sacrificing the rights of aliens in the adjudication process.[8]

Summary Exclusion:

Section 121 establishes a procedure under which an alien who "does not have the documentation required to obtain entry into the United States" or appears not to "have any reasonable basis for legal entry" and "has not applied for asylum under section 208" would be summarily "excluded from entry into the United States without further inquiry or hearing." Such a determination would not be subject either to administrative or judicial review. (Sec. 122, 123)

The ACLU strongly objects to summary exclusion. First, this procedure is a significant curtailment of the rights of aliens available under current law, principally the right to present his or her case for admissibility or asylum at an adversarial hearing before an immigration judge with legal representation.[9] Second, it can lead to the exclusion of aliens who may have bona fide claims to refugee status under our laws and treaty obligations.

As the Immigration and Nationality Law Committee of the New York Bar Association points out in its Report on Summary Exclusion,

> A refugee who would experience persection might be turned away from the border under the proposed procedures without any recourse simply because of an inability to articulate the reasons that persecution is feared or to persuade the inspector that the fear is well-founded or because he or she is afraid to speak to authorities.[10]

Quoting from the Handbook on Procedures and Criteria for Determining Refugee Status published in 1979 by the United Nations High Commissioner for Refugees (UNHCR), the New York Bar Association Immigration Committee points to the psychological, language and other barriers which may make it impossible for a refugee arriving at the border to establish his or her bona fides:

> It should be recalled that an applicant for refugee status is normally in a particularly vulnerable situation. He finds himself in an alien environment and may experience serious difficulties, technical and psychological in submitting his case to the authorities of a foreign country, often in a language not his

own....(Para. 190) An applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule.In most cases a personfleeing from persecution will have arrived with the barest necessities and very frequently even without personal documents...(Para. 196)

A person, who, because of his experiences, was in fear of the authorities in his own country may still feel apprehensive vis-a-vis any authority.He may therefore be afraid to speak freely and give a full and accurate account of his case. (Para.198) [11]

RECOMMENDATION: We recommend that the examining immigration officer be required to notify arriving aliens of their right to counsel and that the notice be in writing and in the language of the arriving alien. (Amendment 1 To Be Supplied)

First, we note that the right to counsel exists in any exclusion or deportation hearing under current law and that the proposed legislation does not seek to abrogate that right.[12] The Immigration and Naturalization Service today provides lists of free legal services available to indigent aliens.[13]

Second, because these are matters of "life or freedom", swe think there is nothing else short of retaining current law to insure that bona fide asylum claims are presented. See Orantes-Hernandez v. Smith, 541 F. Supp. 351 (C.D.Calif. 1982).

Reform of Asylum Procedure:

In testifying on S.2222 before the Senate Judiciary Committee in April, 1982, we recognized the need for reform of current asylum determination procedures. We aplauded, with only certain reservations, the legislation's proposed scheme, including (1) the creation of an independent United States Immigration Board (USIB) within the Department of Justice which would be appointed by the President with the advice and consent of the Senate; (2) the authority of the Board Chairman to appoint specially trained administrative law judges to conduct asylum hearings; (3) the requirement of a "non-adversarial" hearing which at the same time preserved the right of an alien to be represented by counsel, to call and cross-examine witnesses, and to have a complete record of the proceedings. The procedure established the basis for fair hearings and administrative appeals, particularly since the administrative judges and USIB would be independent from those who are charged with enforcing the immigration laws

Unfortunately, the full Senate Judiciary Committee at markup chose to place the administrative structure where it is now, under the control of the Justice Department.Section 122 authorizes the Attorney General to appoint the USIB and immigration judges to hear asylum, exclusion, and deportation cases.The legislation does preserve the basic asylum hearing contained in S.2222 as introduced.

RECOMMENDATION: To insure fair and impartial asylum hearings, we strongly urge the Committee to reconsider its position and restore the independent administrative structure.Ideally, the Senate Judiciary Committee should adopt the administrative structure and procedures contained in H.R. 7357 as reported by the House Judiciary Committee last September and contained in the house bill as introduced this year.

First, the House bill establishes a USIB appointed by the President with the advice and consent of the Senate and authorizes the Chairman to appoint specially trained administrative law judges. (Sec. 122) This insures both independence and necessary expertise in sensitive asylum matters.

Second, the House asylum procedures (Sec.124) improve on those contained in the Senate bill in the following significant ways:

(a) set time limits to expedite proceedings which are not unduly burdensome on applicants when considered in combination with the right of an alien to reopen an asylum determination on broader grounds of "changed circumstances" than provided in the Senate bill (see below);

(b) provides for the release of aliens on parole in cases where they are not responsible for hearing delays;

(c) explicitly provides that applicants "shall be advised of the privilege of being represented by counsel";

(d) requires hearings to be recorded "verbatum" and a transcript to be made available not later than 10 days after the completion of a hearing;

(e) permits an alien to secure an asylum hearing even though (1) time limits have passed, (2) his application has previously been denied, or (3) have an administrative judge reopen a proceeding after a determination if he or she can show that in the interum "changed circumstances have resulted in a change in the basis for the alien's claim of asylum." This is a particulary important difference from the Senate bill which limits changed circumstances to "changed circumstances in the country of the alien's nationality." The Senate bill ignores the possibility that material facts may come to light in the United States which would have led to a different result had they been known at the time of the determination(for example, circumstances may not change in a country but more facts become known that would lead to a conclusion that a particular person's life or liberty would be threatened by returning him to his country of origin) or that the conduct of the person after the determination may put his life in danger (for example, the applicant has performed acts or stated opinions which are unacceptable to authorities in his country giving rise to a well-founded fear of persecution); [14]

(f) gives the administrative law judge additional discretion to grant an asylum hearing if "the interests of justice require the consideration."

Review of Asylum, Exclusion, and Deportation Orders:

Under the Senate bill, federal courts may not review administrative asylum and exclusion orders except pursuant to a writ of "habeas corpus under the Constitution." (Sec.123) Because of the gravity of the issues at stake and the fact that court cases are not the primary cause of the current administrative backlog, we believe this curtailment of federal court review is far too severe. While the present process, involving federal district court and then appellate court review of final orders is cumbersome and duplicative, we believe judicial review of the merits of the administrative decision is necessary and warranted.

RECOMMENDATION: We recommend the Senate Judiciary Committee adopt the House Judiciary Committee provision permitting circuit court review of final orders in asylum and exclusion cases but under the standard of whether the findings of fact are supported by "substantial evidence." This would afford the same measure of judicial review the Senate bill provides in deportation cases under Section 123.

We note with approval that the Senate Judiciary Committee Report language suggests that judicial review is available by interpreting "habeas corpus" review to include whether procedures could "be relied on for an objective determination, on the merits, of whether or not the individual applicant satisfies the statutory definition of 'refugee' in INA section 101(a)(42)."

Rather than such an ambiguous formulation of habeas corpus, which may lead to protracted litigation designed to convince the federal district courts to review the merits of petitions (with the potential of defeating the Committee's intent to streamline the process), we believe the Committee should explicitly provide for appellate review by the federal circuit courts. Aliens will have their day in court and the Congress will have eliminated the cumbersome and repetitive multiple reviews under current law.

RECOMMENDATION: Judicial review should also include review of denials of petitions to reopen or reconsider because of "changed circumstances" outside the context of a final order. (Amendment 3 To Be Supplied) This right available under current law is eliminated by the Senate bill (Sec. 123(b)

We recognize that multiple stays based often on frivolous motions have been used to delay execution of final orders, sometimes resulting in delays of several years in the departure of aliens not otherwise entitled to stay in the country. However, it must also be recognized that deserving cases do arise after final orders are entered. See Sida v. INS, 665 F.2d 851 (9th Cir. 1981);Ravancho v. INS, 658 F.2d 169 (3rd Cir. 1981). An alien may only then obtain the assistance of counsel or material facts may come to light which would entitle an alien to asylum. Again recognizing that these cases account for only a fraction of the current backlog (about 300 such appeals were filed in 1981-1982), some adjustment should be made to insure that deserving cases are reviewed. Rather than rule out judicial review altogether, the Committee should instead provide for review but develop an expedited procedure for screening out nonmeritorious motions brought only for purposes of delay.

Habeas Corpus and Pattern and Practice Litigation:

The Senate bill limits the jurisdiction of the federal courts to consider habeas corpus petitions to "the right of habeas corpus under the Constitution." (Sec. 123) This may be misinterpreted to limit the availability of the writ to address statutory and treaty violations, including violations of the Protocol Relating to the Status of Refugees, rights available under current law. It also gives rise to concern about what constitutes custody for purposes of invoking habeas corpus jurisdiction.

The ACLU views this as needless ambiguity, since the Senate Judiciary Committee Report, we note approvingly, goes to considerable lengths to interpret "habeas corpus under the Constitution" broadly. The Report states that custody includes those "paroled pending their hearing" as well as physical custody for purposes of habeas corpus. The Report interprets "under the Constitution" to include not only whether the individual adjudiciation was "through fundamentally fair procedures" but whether the procedures could be "relied on for an objective determination, on the merits, of whether or the individual applicant satisfies the statutory defintion of 'refugee' in INA section 101(a)(42)", thus implying review encompassing statutory and treaty obligations. The Senate Report also makes it clear that individual or multi-party habeas actions are allowed.[15]

RECOMMENDATION: If this is the Committee intent-- and we believe it must be to preserve fundamental rights of alien-- we recommend that the Committee clarify the scope of habeas corpus in the statute as accomplished by the House Judiciary Committee last year.

The House committee version avoids the risk of misinterprertation or confusion by incorporating the "right of habeas corpus under chapter 153 of title 28, United States Code,"(Sec. 123(b)) which confers jurisdiction to address violations of Constitution, statute, or treaty. The House version also explicity provides that petitions may be "based upon custody effected pursuant to...(the Immigration and Nationality Act," and may be brought "individuallly or on a multiple party basis as the interests of judicial efficiency and justice may require."(Sec. 123(b))

We note with approval that the Senate Judiciary Committee Report states that a habeas corpus petition is the proper method of challenging due process violations such as a "pattern or practice of denying asylum applications made by aliens from a particular country because of their national origin rather than on the basis of the merits of their individual claims." [16] While few in number, "pattern or practice" litigation has proved crucial in protecting aliens rights. See Haitian Refugee Center v. Civiletti, 503 F. Supp 442 (S.D. Fla. 1980), modified on other grounds, 676 F. 2d 1023 (5th Cir. 1982), in which the district court ruled that the asylum adjudiciation process had been perverted in connection with a government Haitian Program designed to expel Haitians without regard to the individual circumstances of their cases.

However, the Senate bill and Senate Judiciary Committee Report do not make it clear that "pattern and practice" litigation is now and should continue to be available without requiring exhaustion of administrative remedies. The Report states that the "Committee intends, to the degree constitutionally appropriate, that the courts not prevent the commencement of the administrative process or interrupt or stay ongoing administrative determinations..." [17] This report language may lead to a change in the traditional rules of exhaustion which ought to be preserved.

RECOMMENDATION: We recommend that the legislation be amended to explicitly provide for "pattern and practice" suits and specify that petitioners need not exhaust ageny proceedings when (1) the agency cannot supply an adequate remedy; (2) the agency action will cause irreparable injury; (3) the agency has exceeded its statutory authority; or (4) pursuing an administrative remedy would be futile.[18]

Aliens placed in circumstances such as the Hatians or Salvadorians should not be required to exhaust administrative remedies before challenging clear government patterns and pratices of denying them rights under statute and the Constitution. Again, this litigation accounts for only a fraction of the backlog, and the backlog is the fault of the government for its practices and not the fault of petitioners whose rights have been violated. (See Overview Supra)

Access to Information:

Section 124(c) of the bill, added by amendment on the floor last year, authorizes a blanket denial of access under the Freedom of Information Act to all federal agency records or proceedings concerning requests for asylum, refugee status, withholding of deportation or any other relief arising from a claim of persecution on account of race, religion, political opinion, nationality, or membership in a particular social group.

The intent of the provision is to allay fears that persecuting authorities may obtain access to the information and use it to the detriment of asylum applicants. We support the intent of the provision but believe it sweeps far too broadly.

First, it would prevent individuals who are themselves the subject of such proceedings from obtaining access to any of the records generated by their own requests for relief. They may even be denied access to information which they themselves provided. We doubt that this result was intended by the drafters.

Second, it would bar third parties, such as the press and human rights organizations, from obtaining information necessary to monitor the asylum process. If the purpose is to protect the confidentiality of sensitive applicant records, it should be noted that the Freedom of Information Act already exempts "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." 5 U.S.C. 552(b)(6).

However, since there may be some question whether the sensitive records here are exempt under FOIA, a narrow amendment could clarify the exemption of this information without denying third parties information about the way in which asylum, refugee status, and similar proceedings are conducted.

RECOMMENDATION: The Senate Judiciary Committee should adopt an amendment which exempts the information, but makes the exemption inapplicable to first-party requests and to third party requests to the extent that the information does not reveal sensitive information which reasonably could be expected to disclose the identity of an applicant for asylum. (Amendment 4 To Be Supplied)

FOOTNOTES

1. INA Section 243(h). See Refugee Act of 1980 (pub. L. 96.212, 94 Stat. 102)

2. 19 U.S.T. 6257, T.I.A.S. No. 2322, 606 U.N.T.S. 268

3. Immigration Reform and Control, Report of the Committee on the Judiciary United States Senate on S. 2222 (Report No. 97-485) (june 30,1968), p.4

4. INS Servicewide Totals, September 1982

5. Immigration Reform and Control Act of 1982, Report of the Committee on the Judiciary House of Representatives 97th Congress (Report 97-890 Part 1 September 28, 1982), p.53

6. Senate Report Supra, p.4

7. INS Servicewide Totals, June 1982

8. Section 301 establishes temporary status for Cubans and Haitians

9. See 8 U.S.C. sections 1158, 1225, 1226, 1362

10. Report on the Summary Exclusion and Judicial Review Provisions of Pending Legislation to Amend the Immigration Laws by the Immigration and Nationality Law Committee of the Association of the Bar of the City of New York (Nov. 1982) p.4

11. New York Bar Report, pp.5-6

12. 8 U.S.C. Section 1362

13. See 8 C.F.R. Sec. 236.2, 242.1(c)

14. Comments by the Office of the United Nations High Commissioner for Refugees on the Immigration Reform and Control Bill of 1982, H.R. 6514

15. Senate Report pp.12-14

16. Senate Report p.13

17. Senate Report, p.14

18. See New York Bar Association Report for Discussion of Exhaustion Case Law and "Pattern and Practice" Recommendation.

Senator **Simpson**. Mr. Newton Cattell, please.

STATEMENT OF NEWTON O. CATTELL

Mr. **Cattell**. Thank you. Mr. Chairman, I am Newton Cattell, executive director for Federal relations of the Association of American Universities. I am honored to have this opportunity to present testimony on behalf of the higher education community. I will summarize, if I may, and I hope that my full testimony will be in the record.

Senator **Simpson**. Without objection, it is entered.

Mr. **Cattell**. Thank you. Our institutions have a twofold interest in the legislation under consideration.

First, the universities must have access, we think, to the best faculty in all academic disciplines and from all sources and, this bill, if passed, would limit that access.

Second, the 2-year return requirement for students will have unfortunate repercussions on foreign student programs. I will comment on the faculty issues, if I may, and I appeal to you to read carefully the testimony of the National Association of Foreign Student Affairs on the foreign student issue.

Mr. Chairman, our case for special consideration under the Immigration and Nationality Act rests finally on the national interest in the quality of scholarship teaching and research in America's greatest universities. The graduates of our institutions run our businesses, write our newspapers, and lead our Government. University scientists bring international acclaim and their discoveries enable American companies to develop technologies and products that compete effectively in world markets.

Finally, and not least, we can all be proud of the quality of our scholarships in arts and letters.

How does all this relate to immigration policy? I think the answer is evident. Our universities are world class institutions only because they can and do recruit world class faculties into various disciplines. There are no restrictions on who may be employed to teach at Yale, at Wyoming, Harvard, or Kentucky.

Unintentionally, I believe, the Immigration Reform and Control Act as it was introduced last year, would have nearly eliminated university access to faculty from foreign lands.

Had the bill passed in that form, the future quality of American scholarship would have been jeopardized. We are pleased that the chairman of this subcommittee and the ranking member agreed to floor amendments that make significant improvements in the legislation. At the risk, however, of appearing to be ungrateful, I would like to describe a few changes that we hope the committee will consider.

As you know, we have great reservations about the requirement that students must return to their home countries for 2 years before they may be eligible for permanent visas. That provision would have prevented student adjustments and therefore would have eliminated our principal source of foreign faculty.

A Senate floor amendment did grant 1,500 waivers for students with doctoral degrees who can teach in engineering and mathematics and science. We believe that the cap of 1,500 is unwise. We do not need that number now, but perhaps we will need more the 1,500 next year or the year after. Remember, we are seeking a small number of the best people.

If our needs increase and if foreign student graduates are the best available people, we think we should be permitted to employ them. And since our institutions are not and should not be technical institutes, we hope that waivers will be granted to students in all academic disciplines.

Finally, lest this committee take a lead from the House, the sunset provision on waivers for students who will become faculty is inappropriate to say the least. As our need to be excellent will not go away, so our need for student waivers will not sunset.

The floor amendment, Mr. Chairman, accommodated university faculty very well. It added members of the professions holding doctorate degrees to the new first preference. We are pleased to see that provision in the current bill and we hope it will remain there. The faculty will not add many persons to the first preference and their presence in university classrooms and laboratories should be, we think a national priority.

Finally, the bill under consideration deletes a concession that the Congress granted to our institutions in 1976. It said that before foreign nationals can be denied labor certification for faculty positions, American applicants must be equally qualified. Foreign candidates for positions with other employers can be barred from labor certification if American candidates are minimally qualified. It is critical that the new law retained the existing provision, we think. It cannot be in the national interest to require our institutions to turn away world class faculty simply because less qualified, but similarly credentialled Americans are available to serve.

I am grateful to have had this opportunity to testify, sir.

Senator SIMPSON. Thank you very much.

Just a few questions, going down the line, I would ask Roger Conner.

Your organization, I think is one of the—maybe the sole membership organization devoted exclusively to immigration reform.

Could you advise us of the reaction of your membership with respect to the failure of any immigration reform as they have followed the situation in this organization?

Mr. CONNER. I think the best description is frustration and a feeling that their worst fears about the Washington political process are being proven out. They read the opinion polls, they are putting their money where their mouths are by joining their organization in their beliefs. They see what is obvious to the people in this country, they saw the vote on the floor of the Senate that gave them hope that the process can work. Then, after the House failed to pass the bill, their feeling was that once again, the kind of narrow special interest politics and backroom deals that, frankly, far too many Americans feel characterizes the Washington process, won out again.

I think that what happened last year was a loss to the whole country and not just immigration. With all the support this legislation had, the overwhelming reaction of the man on the street that knew anything about it, was: "Yes, that is the same old stuff."

Senator **Simpson**. Could you just swiftly elaborate on the difficulties you see with respect to implementation of the legalization provisions that are now on the bill?

Mr. **Conner**. First of all, it is, in essence contracting out a vital function of the Immigration and Naturalization Service; to screen applicants for permanent legal residence in this country by the private agencies. It is not only that, but the Service will contract with private agencies that do not agree with this committee about who ought to get those benefits. I think that it is going to create a black eye for this committee, a black eye for the INS, a black eye for the agencies involved and a feeling among the American people that they are being gimmicked, that they are being taken advantage of again. It is unwise and unsound. A simple act of creating something like a statute of limitations that rings true with a sense of justice and order of the American people is something that the committee can do by building on a provision that is already in the current law: registry under section 249 of the INA. It seems to us more sound. If you need more people to process the large numbers of applicants for registry, then do what the Census Bureau does when it needs a bunch of people. It does not go giving money to nongovernmental agencies. It hires more people.

Senator **Simpson**. That will be something that we will carefully oversee and that is the activities of the voluntary agencies without intruding on their duties. But you know they, in many cases, are contracted for. Therefore, there has to be some element of oversight when they are being paid for certain duties. There is going to be INS scrutiny.

Mr. **Conner**. Mr. Chairman, it is odd to me that the very agencies that demand great oversight and multiple reviews when government officials are spending tax dollars want no oversight at all when they are to spend the tax dollars.

Senator **Simpson**. The next question. That is rather fascinating. I might ask Carole Baker, what is an ideal level of population increase in the United States and what should be the immigration's role in it. You are absolutely right, the Select Commission and our group and the House group have been rather startled that there is no population policy in the United States. That does not mean who to pick to come in or anything else. It just means population policies. So, what is this ideal level, if there is one as you see it.

Ms. **Baker**. Mr. Chairman, even though I had a feeling I was going to be asked that question, I still cannot answer it, I think, to any satisfaction.

The fact is that this country does not have any consistent way of collecting and analyzing data and projecting trends that can tell us what the carrying capacity of this country is and what an ideal number would be for this country. In fact, Mr. Hatfield's legislation, which I referred to, in my testimony would not only set a policy of population stabilization for this country, but would provide us with the mechanisms to coordinate and analyze our data and to project trends so that we are able to more clearly arrive at an ideal carrying capacity. As I said in my testimony, many people believe that [illegible] are already at too high a level of numbers in this country. Our position is that we need to stabilize, as quickly as possible, at the lowest possible number, through voluntary means, and while we still have some voluntary options open to us.

We see immigration's role in this as being to set immigration at the lowest possible levels while still maintaining our role in the world as an immigrant receiving country.

Senator SIMPSON. What is your estimate of the U.S. population in 30 to 50 years if the legalization program were enacted without a cap on legal immigration.

Ms. BAKER. Without a cap?

Senator SIMPSON. Without a cap.

Ms. BAKER. Without a cap on legal immigration, we would continue to grow ad infinitum. We would never reach stabilization.

Senator SIMPSON. What do you think the U.S. population might be in about a projection of 30 to 50 years with legalization, without a cap on legal immigration, any figures?

Ms. BAKER. Within the next 30 years?

Senator SIMPSON. Whatever, or 50.

Ms. BAKER. The Census Bureau projected that we will reach stabilization at 309 million, if current fertility levels hold, by the year 2050. So, that is one figure that I would suggest. That projection did not include an illegal immigration or legalization. If there were no cap and if immigration netted a 1.5 million increase annually, and if current fertility levels hold, we would reach 342.4 million by 2020 and would continue to grow indefinitely, reaching 403.4 million by 2080. This does not even account for legalization, which would add many millions more to those figures.

Senator SIMPSON. I would be interested in your comment if you heard Michael Teitelbaum, the contention that economic development in the Third World countries increases sometimes migratory pressures, in the short term, and that U.S. aid directed to the development might actually attract more illegal immigrants. Do you have any comments?

Ms. BAKER. I think that could be true in the short term. However, I think that this is a problem that has to be addressed in the short term and the long term and would certainly encourage this Government to continue its commitment not only to economic development, but also the countries of the world are now agreeing that economic development is not the answer to population growth but that there has to be family-planning programs to enable people around the world to implement their desires about family size, which are in fact now for small families.

So, we would strongly encourage the United States to continue its leadership role, which it has begun to decrease in terms of population assistance for family planning around the world.

Senator SIMPSON. Well, that short-term agendas are the norm in this place.

Ms. BAKER. I understand that.

Senator SIMPSON. So, we will do another short-term one, I'm sure.

May I ask John Shattuck? You favor legalization with only modest increase in enforcement.

Assuming that we need a stronger enforcement program to politically proceed with legalization, and there was talk of that this morning, by Father Hesburgh, would you support then a stronger program?

Mr. SHATTUCK. You know, Senator, because we've stated them to you so often, I'm sure you are bored to tears with them, but they are important, our concerns——

Senator SIMPSON. It is Friday afternoon and it is late.

Mr. SHATTUCK. I promise not to do it again.

I must, at least, briefly restate the concern that we have about not so much stronger enforcement, but the method of enforcement that is in the past bills because it basically relies on title VII of the Civil Rights Act to be a safeguard against discrimination among small- and medium-sized employers, particular by who are going to be concerned about the fact that they might get caught up in a very strict employer sanction system.

I would just make three very quick points about title VII.

First, it does not apply to employers of 15 or fewer people in terms of the kinds of application against discrimination that we would like to see.

Second, at the EEOC, as I'm sure you know, there is a tremendous backlog of complaints with respect to employment discrimination, much greater, I would add, than the backlog in some respects in the asylum area.

Third, the cost of civil rights litigation by private parties to enforce title VII, and sometimes the standards of proof of their end, are very, very difficult barriers. So, we are concerned that there is a mismatch between the kind of sanctions in the bill and the kind of sanctions in title VII.

We do support additional enforcement. We believe that the proposal that we are at least discussing here, without necessarily saying that all the elements of it are satisfactory to anybody, including us, gets you a long way down the road because it begins to focus the enforcement responsibilities of the immigration service on those employers who intentionally hire on a pattern of practice basis large numbers of undocumented workers and that is where the real problem is and if it is known that those large employers are going to be affected by the sanction scheme, then we think that there is a deterrent effect against the employer, against the employment of illegals.

Senator SIMPSON. But that employer sanction limited to a pattern or practice issues, would that simply mean less enforcement?

Mr. SHATTUCK. No, I do not believe so, Mr. Chairman. I think it would mean that if you were cited on a pattern of practice basis by the Attorney General and then had to start reporting new hirings to the enforcement unit that we propose, that kind of targeted enforcement and burden on that particular employer is very similar to what goes on, as I said, under the Voting Rights Act.

Senator SIMPSON. It is interesting, the more we all stay in it, you finally come back to something that impedes on something that you had not thought of before. It is a very provoking plan that you present. You say that after the employer has been cited, he must then report all new hires to the Government, and that is going to take a monitoring process by the Government, a requirement of Government monitoring on a continuing basis for certain firms which has heretofore been a bit repugnant to you.

You know, where everybody else is in this issue, once you come up with a solution, it will impinge in some other area; it always does.

Mr. **Shattuck.** As you know, Mr. Chairman, because you discussed this with me many times, we are not antiregulatory. There is no civil liberties principle that stands against Government regulation per se. We are concerned about the targeted nature of the regulation here and to the extent that an employer is cited for engaging in a pattern or practice of intentionally hiring undocumented workers, then we think the burden is properly placed on that employer to make regular reports to the Government of additional hires.

Senator Simpson. Well, you deal in an issue which is so real in society. There are those simply who are going to discriminate and they magnificently do so. And then we have those who—they are the same who will not hire those who look or sound foreign and they do that now, unfortunately, and I just wonder again how this measure, this bill would increase that kind of discrimination.

Mr. **Shattuck.** Let me yield to my colleague, Mr. Henderson, who has done a great deal of work in the past weeks on thinking through our position.

Mr. **Henderson.** Well, Senator, the bill as it is presently structured does not adequately address the concern that discrimination, regardless whether it be intentional as you raised, or albeit the result of the system can be adequately remedied.

Now, the problems that John pointed out in the title VII coverage with respect to protection of civil rights, are inadequate in the match between protections and between the provisions of the bill.

Our concern at this point is to try to develop an alternative that disengages that conflict between enforcement provisions on the one hand and between protection of civil rights on the other. Our concern is that the verification system, in spite of its premise that it will help to eliminate discrimination by requiring employers to examine every individual, in and of itself will not remedy the problem nor will it necessarily take away the discriminatory intent that some employers have. And that is really, I think, the purpose behind our——

Senator **Simpson.** Well, I just want to commend you for giving some very serious thought to the issues and I see it developing, the process there, that you have obviously grappled with it, really grappled with it and that is good. I am pleased to sense an understanding and awareness there that I see growing and maturing regardless of where we go with it.

Mr. **Shattuck.** Thank you, Senator.

Could I just add one point? I do not want to prolong the dialog here.

Senator **Simpson.** You are the ones that said it was Friday.

Mr. **Shattuck.** I know; I am just feeling great.

Senator **Simpson.** I know, but how about me? [Laughter.]

Mr. **Shattuck.** Gee, I'm sorry.

No, just one point that I want to make. We have convened with a number of other concerned organizations concerned about the discriminatory potential of the sanction scheme. We have convened a group of employment experts, experts in title VII areas, and that is a working group from which recommendations, we hope, will emerge in a kind of formal basis other than simply through our testimony, and not only recommendations, but expertise which with all due respect, Mr. Chairman, in the past consideration of this bill simply was not drawn upon, we think. There was not enough involvement of civil rights experts in the employment discrimination area and we would hope that you would welcome the opportunity to have their involvement in this and we will bring it to your attention.

Senator SIMPSON. We can arrange a type of staff consultation with those persons and we will do so.

Mr. SHATTUCK. We appreciate it.

Senator SIMPSON. Mr. Cattell, you argue for retention of the special labor certification requirement for universities in order to permit them to hire foreign faculty and researchers unless equally qualified Americans are available. It is a touchy issue. We tried to address it, but if that were to occur, does not that contribute to just convenience hiring?

Mr. CATTELL. No, I do not believe so, sir.

In our formal testimony, we described the academic hiring practices of our institutions. Our institutions document the whole employment procedure for hiring each new faculty member. They must retain a description of the position, they must show how that position was advertised and otherwise made public, the credentials of the people they talked with, the peer ratings that they got on the individuals. We think that there is ample opportunity for the Labor Department or any other governmental agency to check and make certain that we were not engaging in convenience hiring.

Senator SIMPSON. I think we look at it as—you use the student who worked for you as an undergraduate and then it seems it could easily prevent Americans from obtaining the graduate fellowships available to that faculty. In short, you know, why should not a university have the same labor certification requirement as other businesses?

Mr. CATTELL. The labor certification requirements for other businesses enable the Labor Department, and this was the case prior to 1976, enables the Labor Department to deny labor certification to better qualified individuals. And we think if that is applied to universities it will be an unwise policy; that we should be forced to hire less competent individuals.

Senator SIMPSON. We have that number 1,500 of waivers granted at universities in 1980 and now we have 1,500 in this legislation available for universities; would not that in all practical ways meet the universities needs?

Mr. CATTELL. They meet our present needs, sir, but we cannot tell you about what the future will be.

Senator SIMPSON. You are the only one asking for a long-term solution?

Mr. CATTELL. We have long-term needs.

Senator SIMPSON. One final question, and we really were surprised, not surprised, because we had—I had seen this in the Select Commission, but how did we become so dependent; where was the failure of higher education that placed the——

Mr. CATTELL. I think there are two issues here.

One is of the dependence of industry, perhaps, on foreign engineers, and I hear that's spoken of as an unhealthy dependence, much like the dependence on OPEC or the dependence on alcohol. I do not think you want to consider the dependence of the universities on foreign faculty as being an unhealthy dependence. We seek them out because we are seeking the best possible individuals to do the job.

Senator SIMPSON. That is an interesting thing. I'm sure there are some tomes written on it.

Mr. CATTELL. We will write them. [Laughter.]

Senator SIMPSON. And I will have someone brief them for me. [Laughter.]

That will conclude. I want to commend the staff, this fine staff, majority and minority, for their fine work, and Tina, who set up a nice operation in a grizzly location. Thank you.

And so we will proceed again Monday at 10 a.m. with further hearings on the Immigration Reform and Control Act of 1983 and I thank you for your participation and your patience.

[Whereupon, at 4:27 p.m., the subcommittee was adjourned.]

[The prepared statement of Newton Cattell follows:]

PREPARED STATEMENT OF NEWTON O. CATTELL

Immigration Reform
Educational Implications

Summary

1. The amendments to the Immigration and Nationality Act as introduced during the 97th Congress would have severely limited university access to foreign faculty.

2. University need for foreign faculty is compared to industrial dependence on foreign engineers: Whereas companies want foreign engineers at this time because there is a shortage of qualified Americans, universities which compete for international excellence, seek out foreign faculty, not because of periodic shortages but because they must have the best talent in all disciplines irrespective of country of origin.

3. The two-year home residency requirement does not seem to be based on data that would document the abuse of existing law. The provision is not in this country's best interest because it will reverse a long standing U.S. policy that places no unnecessary burdens on exchange students and it will foreclose opportunities for universities to employ the best qualified faculty. Moreover, there is no evidence that developing countries believe that existing U.S. law is inadequate to protect their interests in educated manpower.

4. If the two-year return requirement must remain in the legislation, waivers from it with no disciplinary restrictions, no numerical limitations and no sunset provision should be available to students who are faculty or academic research candidates.

5. Because U.S. pre-eminent colleges and universities are an important national resource, foreign faculty should be granted first preference (if the Senate preference provisions are adopted) along with aliens of exceptional ability. Universities should not have to compete for visas with others in the second preference. The number of foreign faculty granted labor certification each year is small (estimated at 1600 in 1980) and will not disadvantage candidates for second preference.

6. In 1976, Congress recognized the unique circumstances of universities and provided, in law, that foreign faculty must be granted labor certifications unless equally qualified Americans are available. (Other employers are barred from labor certification if minimally qualified Americans are available.) The equally qualified language should be retained so that universities may continue to employ the best talent from all sources, both domestic and foreign.

Immigration Reform and Control Act (S.529)

Mr. Chairman, members of the Subcommittee, I am Newton Cattell, Executive Director for Federal Relations of the Association of American Universities. I am honored to present the views of the higher education community on the Immigration Reform and Control Act (S.529). I am here on behalf of the American Council on Education, which represents nearly all U.S.

colleges and universities, and the Association of American Universities, which represents America's great research universities.

Mr. Chairman, I do not believe that many Members of Congress were aware last year, when immigration reform measures were introduced, that the proposed law would have significant consequences for colleges and universities. Had the legislation passed as it was introduced, institutions of higher education would have been unable to employ graduating foreign students to serve as faculty until the students had returned to their "home countries" for two years. As for foreign faculty from overseas, only the superstars could have readily obtained visas under the new first preference. Other faculty candidates, even those deemed by their academic peers to be among the most promising in their fields, would have had to compete for visas with "skilled workers".

Both the House and the Senate made important changes in the legislation to accommodate it to the needs of American higher education. My purpose is to summarize the educational implications of the legislation, to restate the arguments that brought about change last year and to describe how the legislation can be modified so that it will not unnecessarily compromise the quality of American scholarship and research.

The first part of our testimony will describe why institutions of higher education must continue indefinitely to have access to foreign faculty. The second part will address those sections of the legislation that would limit access to foreign faculty and what should be done to modify them.

Foreign Faculty

Few would disagree with the contention that the economic and cultural health of the U.S. and its national security depend, in part, on its principal colleges and universities. To maintain the quality of their scholarship and research, U.S. institutions of higher education must have access to the best faculty in all disciplines and from all sources - including scholars from other countries. To limit access to foreign faculty is to limit the capacity of U.S. institutions to teach the youth of America and to limit the capacity of universities to conduct basic research which, of course, is the basis for future technological advances.

During the debate on immigration reform, many in Congress expressed the view that employer dependence on foreign nationals is unhealthy and that universities and others should be training Americans to do the work for which foreign nationals are sought. Industrial dependence on foreign engineers is, perhaps, a necessary expedient while more Americans are trained in U.S. colleges of engineering. As mentioned above, however, university use of foreign faculty is not a temporary measure while other sources of talent are developed. American higher education's commitment to excellence is a continuing one and depends solely on obtaining the best available scholars in this country and from abroad.

Institutions of higher education do not employ foreign faculty as a response to periodic manpower shortages. Traditionally, they have sought the best talent in all disciplines from all sources - domestic and foreign. The following table is a record of visa applications for foreign faculty by seven selected research universities from 1974 through 1982. (Prior to 1974, visa applicants were not required to include employer commitments.)

Visa Applications from Selected Universities 1974 - 1981

Year	A	B	C	D	E	F	G	Total
1974	13	3	13	6	11	4	6	46
1975	11	5	10	6	3	15	9	59
1976	7	2	12	8	9	7	12	57
1977	10	8	5	9	4	9	6	51
1978	15	0	19	18	9	11	16	88
1979	9	4	14	17	7	8	22	71
1980	7	9	6	21	5	8	23	79
1981	14	6	19	13	2	10	27	97

Although there has been a small increase in visa application between 1979 through 1982, the record shows a relatively constant demand even before the engineering shortage developed - about 1978. Four institutions differentiated in their reports between "science" and "non-science" faculty. The ratio is about three to one in favor of science faculty. Clearly, some employment of foreign faculty is a response to shortages (the information from institution "G" tend to skew the data to give this impression), but just as clearly, the data indicate that universities are always in search of the best talent, some of which is found abroad. The fact that foreign faculty constitute a minute portion of the total is indirect testimony to the ability in recent decades of American universities to produce many of the world's best scholars in all fields.

Two-Year Home Residency Requirement

Because Congressional sponsors were concerned about issues that fall under the general rubric of the "brain drain" and because of perceived abuses of current law, both the House and the Senate bills require that students in this country on both "F" and "M" visas return to their home countries for two years upon completion of their studies. (This, of course, is in addition to the required return under present law of many students holding "J" visas). This more comprehensive two-year return requirement is regrettable, first of all, because brain drain or other possible abuses can be addressed by the proper implementation of those labor certification requirements which lead to immigration visas and with less sweeping changes in present law; secondly, the very positive international economic and political ramifications of our exchange programs will be seriously eroded by a policy (not apparently justified by available data) that places a heavy burden on foreign student; and finally, faculty candidates sent home for two years will be unlikely to return and those who do return will find their research interrupted and their prospective employment jeopardized.

Nonetheless, if Congress is determined to require that students return home, waivers should be authorized for those who are offered teaching and/or research positions in institutions of higher education. To provide properly for the needs of education and research, waivers should be available to students in all academic disciplines, there should be no cap on the number of waivers that may be granted, nor should there be a sunset clause on the waiver provision.

A note on the "brain drain" issue: scholarly exchange, traditionally, has been a two-way street. Many of America's best minds devote their careers to scholarly work and to development activities in third world countries. Furthermore, most of America's great universities have good linkages abroad that are a result of long-term, sustained commitments to help third world countries expand the capacity and improve the quality of their own universities. Likewise, scholars from less developed countries and others serve in western nations and elsewhere. The existing system of scholarly exchange works well, benefiting all countries involved and building strong foundations for world trade, world understanding and world peace. Until hard data on the "brain drain" document serious dysfunctions, this system should remain as it is under current law.

The Preference System

Sponsors of the immigration legislation (as it was initially introduced) reserve the first preference for truly exceptional people (i.e., scholars with established reputations), some of whom might become university faculty but none of whom, by definition, would be recent graduates. Most faculty candidates, no matter how great their promise, would qualify only for the second preference - "skilled workers".

The arguments for including faculty candidates in the first preference are: 1) the law should recognize the special needs of American colleges and universities which educate the youth and which conduct most of the country's basic research. Those institutions are a precious national resource; their quality should be enhanced and not unnecessarily jeopardized; and 2) although comprehensive data is unavailable, it appears that very few labor certifications are granted each year for university employees. A Labor Department official reported that only 1600 labor certifications were granted in 1980. Foreign faculty will add very few numbers to the first preference and will have little affect on the immigration of persons in subsequent preferences. A helpful Senate floor amendment added the phrase "members of the professions holding doctoral degrees" to the first preference. The amendment will accommodate nearly all needed faculty. (It is unclear how many persons, in addition to faculty candidates, will qualify for the first preference under the terms of that phrase.)

In 1976, Congress recognized the special needs of colleges and universities with an amendment to the Immigration and Nationality Act that allowed institutions to obtain labor certification for foreign nationals unless there were equally qualified Americans willing and able to work. Other employers are barred from labor certification if available Americans are minimally qualified. The equally qualified issue is important and will receive special consideration below. It is mentioned here because it will be consistent with its 1976 action for Congress, in the proposed legislation, to grant university faculty first preference together with aliens of exceptional ability.

Labor Certification - Equally Qualified

S.2222, but not H.R.6514, deleted the equally qualified provision that was added to the law in 1976. If it is agreed that universities should have access to outstanding foreign faculty, it is critical that the equally qualified language be retained. Prior to 1976, the Department of Labor, exercising its legal prerogatives, consistently denied denied labor certification to foreign faculty candidates if there were available Americans who were properly credentialed. For university faculties, however, formal credentials are the minimal qualifications for employment. In addition to degree requirements, institutions rely on the candidate's record of research and publications as well as peer and other ratings. The latter information is a great deal more important than formal credentials. The House Committee recognized the unique hiring practices of universities in its report on the 1976 legislation.

> "The Committee continues to be disturbed by the administration of the labor certification requirement by the Department of Labor and plans to review this entire program during the next Congress. The Committee, however, is particularly troubled by the rigid interpretation of this section of law as it pertains to research scholars and exceptional members of the teaching profession. More specifically, the Committee believes that the Department of Labor has impeded the efforts of colleges and universities to acquire outstanding educators or faculty members who possess specialized knowledge or a unique combination of administrative and teaching skills. As a result, the legislation includes an amendment to Section 212(a) (14) which required the Secretary of Labor to determine that "equally qualified" American workers are available in order to deny a labor certification for members of the teaching profession or for those who have exceptional ability in the arts and sciences." (House Rept No. 94-1553)

The Labor Department continues to oppose the equally qualified language because, its spokesmen say, it shifts responsibility for labor certification from the Department to the universities. Surely, the Department's interest in protecting American workers from unfair competition from imported labor can, in the case of faculty, best be implemented by requiring evidence from universities that their academic searches are diligent and complete and that persons selected are the most qualified of those who are available. The usual thorough academic search readily produces the following kinds of records.

1) A description of the position to be filled, the ways in which the opening was advertized and otherwise made public, the number of applicants, the number given serious consideration for the position, and the reason why the person selected, American or foreign, was the best qualified for the position.

2) A list of institutions contacted for nominees (if this means of advertising has been used).

3) A copy of the letter of solicitation sent to these institutions. (If telephonic or personal contacts were made, a list of the names, departments and institutions of those contacted should be included.)

4) Copies of advertisements placed in professional journals and/or in other publications.

5) Curriculum vitae, bibliography and degree certificates of the candidates.

6) Copies of articles which were written by the candidates and which have been published (if appropriate).

7) Letters of recommendation concerning the candidates, including some from sources other than individuals associated with the potential employer.

The documentation will vary from institution to institution and from one candidate to another but since it is always in the interest of the institution to locate and attract the best available candidate for the position, the record will show why the winning candidate, if he or she was a foreign national, was more qualified than Americans who were not chosen.

Conclusion

The university case for special consideration under the Immigration and Nationality Act rests finally on the national interest in the quality of university scholarship, teaching and research. As existing law and proposed law grant a special status to aliens of exceptional ability, so should the new law give special consideration to aliens who can assure that American universities maintain and even surpass their existing standards of excellence. If it is established that there is a need for a broader two-year return requirement than presently exists, new law should establish procedures for waiving that requirement for successful candidates for faculty or academic research positions. It is clear that although a sunset provision may or may not be advisable for the industry waivers, a sunset is certainly inadvisable for university waivers. Also, if the proposed new system of preferences is enacted, faculty candidates with "advanced" or "doctoral" degrees should be granted first preference. And finally, the equally qualified provision should be retained in the labor certification section of the law.

On behalf of Representatives of America's colleges and universities, I wish to express my gratitude to the Members of Congress, their staffs and to Committee staff persons for their recognition of the educational implications of the legislation and for the changes that were made last year to help assure the country that its system of higher education will continue to be the best in the world. I appreciate the opportunity that the Chairman and the members of the Subcommittee have given me to represent our testimony.

IMMIGRATION REFORM AND CONTROL ACT

MONDAY, FEBRUARY 28, 1983

U.S. SENATE,
SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room SD-215, Dirksen Senate Office Building, Hon. Alan K. Simpson, chairman of the subcommittee, presiding.

Present: Senators Thurmond and Grassley.

OPENING STATEMENT OF HON. ALAN K. SIMPSON, A U.S. SENATOR FROM THE STATE OF WYOMING, CHAIRMAN, SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY

Senator SIMPSON. The hearing will come to order. Good morning. We are all here plowing familiar furrows in familiar territory. This is our third day of hearings in this session on the Immigration Reform and Control Act of 1983. The two previous days of hearings reflect the general support for the overall legislation, but with many individuals and organizations requesting changes, some minor and some major in nearly all parts of the legislation, kind of like, "Well, we just love what you and Mazzoli are up to, but," you know, very interesting, like getting pecked to death by ducks. [Laughter.]

But anyway, this reflects, I think, what we had in mind, and that is the delicate balance of the legislation, a balance which has generated some rather significant bipartisan support for the bill.

The bill does not reflect always in some instances what even I believe to be the most desirable approach to reform, but on balance, I can accept it and support it, including those provisions which might have generated less than my full enthusiasm.

One of the, I think, great dangers in this fragile package as to the passage of this legislation concerns the efforts of many well-meaning supporters of the overall legislation which endangers, I think, its ultimate passage by insisting upon changes which make it, quote, "just right," unquote, from their point of view, the seeking of perfection which will never be found in the legislative arena anymore than in life itself.

The administration is no different than other organizations in this regard. I know they would prefer different provisions in certain instances, but yet you have maintained a strong overall support for the bill.

One who has been the most steady and consistent ally to me and to Ron Mazzoli throughout, a very steady helpmate in the fray, a dogged advocate and one whose efforts are deeply appreciated by us has been the Attorney General who has worked with the subcommittee most diligently as has his fine staff.

So, it is with particular pleasure that I welcome you to renewed activity and I very much have appreciated your splendid consistency throughout, and it is nice to see you this morning, Mr. Attorney General.

Please proceed. We would be very much interested in your remarks.

STATEMENT OF HON. WILLIAM FRENCH SMITH, ATTORNEY GENERAL, DEPARTMENT OF JUSTICE

Attorney General **Smith**. Thank you very much, Mr. Chairman, and I certainly would like to reciprocate those remarks with respect to this common effort. Some years ago a delegation of American Indians visited Washington and dramatized the plight of their people. The leader of the delegation, Chief Ben American Horse of the Sioux, stopped here at the Capitol to visit Alben Barkley, who was then Vice President of the United States. After a long discussion, the Chief rose to leave. He then paused for a moment, looked the Vice President in the eye and said, "Young fellow, let me give you a little advice. Be careful of your immigration laws. We were careless with ours." [Laughter.]

The United States has indeed in recent years been careless about its immigration laws. In spite of the best efforts by the Immigration and Naturalization Service, those laws themselves have proved inadequate to meet the pressure of ever increasing illegal immigration that even now threatens to engulf us. Simply put, we have lost control of our own borders. As a result, we need new immigration laws and we need them now.

Discussing the need for immigration reform with this committee is, however, a little like describing another kind of flood to Noah. During the 97th Congress, this subcommittee made a tremendous stride toward that goal. You successfully crafted and negotiated through the Senate the immigration reform bill that is the basis for S. 529, the legislation we have before us today. The decisive and bipartisan margin by which that legislation passed the Senate is a tribute to how well you balanced the many competing interests in any comprehensive immigration reform. The administration appreciates your commitment to this difficult task. We appreciate the prompt introduction in the 98th Congress of S. 529, the Immigration Reform and Control Act of 1983, and the early hearing schedule you established.

In recent years, we have all been through an exhaustive legislative and executive branch discussion about immigration reform. Although disappointed by failure to enact legislation last year, we have the benefit of those debates to chart the legislative course this year. We are all now well informed on the issue of enforcement, civil liberties, cost, social equity and labor force protection, all important in any discussion of immigration reform.

Before specifically addressing the most important provisions of the Immigration Reform and Control Act of 1983, I would like to begin with a few more general observations. This legislation would strengthen the law enforcement powers of the Immigration and Naturalization Service by imposing sanctions on those who knowingly hire illegal aliens, and it would reform our procedures to return those who come or remain here illegally. At the same time, the bill would both deal realistically with illegal aliens who are now here and safeguard against discrimination by granting many of them a legal status. It would recognize the special relationship we have with our closest neighbors by increasing the visa allocation for Canada and Mexico. By establishing certain statutory provisions for the present H-2 temporary worker program, it acknowledges the likely need for some kind of legal foreign labor but would protect U.S. workers.

Failure to enact reform legislation of this kind can only result in further illegal migration, greater public frustration over the Government's inability to control our borders, and the negative social and economic effects occasioned by so large a number of persons living outside the law. Each day lost in enacting effective reform legislation makes it increasingly difficult to remedy these problems. For all these reasons, the administration strongly supports the enactment of S. 529.

At the root of illegal immigration is the ready access of illegal entrants and visa abusers to jobs that are very attractive when compared to employment opportunities in their homelands. The cornerstone of immigration control in S. 529 is therefore a provision making it illegal knowingly to hire aliens who are not authorized to work in the United States. Employer sanctions is the only remaining credible tool to stop the flood of illegal immigration. As long as the American job market remains open to them, illegal aliens will risk the dangers of illegal entry, cost of smuggling or fraudulent visas and the likelihood of apprehension and deportation.

As I said in my testimony last year:

> In pursuing a law that will close the labor force to illegal arrivals, we must do so in a manner that is not unreasonably burdensome in cost and that is consistent with our values of individual liberty and privacy.

Toward those ends, the administration has several recommendations concerning employer sanctions.

We should work together as contemplated by the bill to insure the adequacy of our system of varifying employment eligibility, but we should do nothing that would result in a national identify card or system. The President's Task Force on Immigration and Refugee Policy reviewed the alternatives to the use of existing documentation for establishing employment eligibility. As we indicated last year, the administration is willing to study and report to you on the need for and feasibility of improvements in present documentation. We would be prepared to begin the implementation of appropriate changes within 3 years of enactment of this legislation. This period will provide us with an opportunity to evaluate the efficacy of relying on existing documentation and to determine what, if any, improvements would be appropriate.

The administration agrees with the premise behind the legalization provisions in S. 529 that we must deal realistically with the aliens who now live in the U.S. illegally. Failure to act realistically merely allows the problem to grow, adding perhaps 500,000 new illegal aliens per year to an illegal alien population estimated to be 3.5 to 6 million in 1980. It would not be realistic to attempt widespread deportation or to allow the status quo to continue perpetuating a class of society beyond the protections and sanctions of law. At the same time, we cannot, in fairness to American citizens, legal residents and would-be immigrants waiting patiently to come here legally, provide unduly generous terms of legalization or eligibility for benefits at a time when high unemployment and budget austerity prevail. This bill would provide an opportunity to acquire legal status for those illegal aliens who have shown a commitment to becoming permanent members of our society. It is a sensible and humane approach.

Although some have criticized legalization as a reward for lawbreakers, it represents a practical decision that is consistent with effective law enforcement. The failure to include such a legalization program would aggravate enforcement of employer sanctions. It would leave in place those long-term illegal aliens who are most likely to resist removal from the United States by relying on the procedural safeguards and administrative relief available under existing law. This would divert important resources of the Immigration and Naturalization Service at precisely the time when its enforcement priority should be effective implementation of employer sanctions.

Concerning legalization, S. 529 incorporates the compromise provisions ably crafted by Senator Grassley and adopted by the full Senate last August. This compromise reaches the limits of reasonableness since our original proposal contained a 10-year permanent resident requirement. Illegal aliens who were in the U.S. before January 1, 1977, would be eligible for permanent resident status. Those who came here between 1977 and January 1, 1980, would be eligible for temporary residence status and permanent status after 3 more years as law abiding, self-sufficient residents. Aliens who have a criminal history, have assisted in political persecution or are otherwise inadmissible would not be eligible for legalization.

The bill also provides for a block grant program to assist the States and localities in providing medical care or other welfare services to the newly legalized residents while excluding the new residents from Federal entitlement programs. That ineligibility for Federal entitlement aid would exist for 3 years following the granting of permanent resident status. This appropriately reflects shared Federal responsibility for social welfare costs that may occur with legalization. Illegal aliens eligible for legalization will, however, have to provide evidence of past and current employment in order to be granted legal status. The block grant approach will help offset costs for persons who become seriously ill or incapacitated or otherwise become eligible for State or local assistance programs because of unforeseen circumstances.

With the passage of the Immigration and Nationality Act of 1952, Congress authorized the entry of temporary foreign labor if sufficient domestic workers were not available and their entry would not adversely affect the wages and working conditions of Americans. It is acknowledged that the labor needs of certain sectors of our economy have been filled over the past years by a sizable number of illegal aliens who did not enter under the temporary worker provisions of the act. As we prohibit the employment of illegal aliens, it is important that we also provide a legal mechanism for employers to hire temporary workers when they are unable to find American workers.

The administration supports a statutory authorization of a distinct H-2 temporary worker program. This program may be particularly important for agriculture during the transition period from dependence on illegal alien labor to reliance on domestic labor. During the past year, the Departments of Justice, Labor and Agriculture have been reviewing both the existing H-2 program and proposed statutory modifications. We seek a balanced program that would insure a source of foreign labor but would not exploit employees or provide an added incentive to hire foreign rather than resident workers. Where there are not American workers to fill needed jobs, legislation should provide a legal avenue to admit foreign workers. It should also provide safeguards to insure that American workers are not adversely affected by foreign labor, and it should protect the rights and welfare of all workers.

The administration also enthusiastically supports the proposed reform in S. 529 that would streamline our adjudication procedures. The current appeals process by allowing multiple opportunities for administrative and judicial review has resulted in unconscionable backlogs and has seriously undermined the enforcement of immigration laws.

I appreciate the responsiveness of this subcommittee to suggestions we made last year about the workability of certain provisions in these sections of the bill. In that vein I recommend three further modifications to sections 122 and 124.

First, in order to preserve flexibility for emergency situations and workload changes, the number of immigration judges should not be fixed by statute. Already the prospect of handling asylum determinations in addition to the current caseload supports the need for more than the 70 judges specified in the bill.

Second, persons presently serving as special inquiry officers should be allowed to be designated to hear asylum applications after receiving the needed special international training. With this special training, these is no rationale for precluding any of the former special inquiry officers who are subsequently hired as immigration judges from hearing asylum claims.

Third, the jurisdiction of the U.S. Immigration Board should be capable of expansion by regulation of the Attorney General. The bill incorporates the present regulations on the jurisdiction of the Board, but we are already considering certain changes. Without this flexibility, we would be obliged to seek legislation when any addition is deemed necessary.

Concerning legal immigration, the President's task force proposed two changes. First, increasing the number of visas available to Canada and Mexico which should decrease the number of illegal entries for family reunification, and two, streamlining the labor certification process. We appreciate incorporation of these changes within this bill.

This subcommittee and your counterpart in the House of Representatives brought us to the threshold of historic action on immigration reform in the last Congress. Your continuing commitment to that reform is exemplified by our hearing today and the hearings you have already conducted to provide all interested parties an opportunity to present their views on this important subject.

The administration remains strongly convinced that it is in the national interest that comprehensive immigration reform legislation be enacted without further delay. In the bipartisan tradition that should continue to dominate debate on this subject, we pledge our support in achieving that goal. Together we can insure an end to the kind of carelessness with immigration laws about which Chief Ben American Horse warned. We can insure continued opportunity for both old and new Americans.

Thank you very much.

Senator SIMPSON. Thank you very much, General.

Let me acknowledge the presence of the chairman of the Judiciary Committee of the Senate, who has been wholly supportive and of tremendous assistance to me. I can assure all present that we would not have moved in any way as we did in the past and hopefully again in the future if it hadn't been for Strom Thurmond, and I acknowledge his presence and also express my deep appreciation.

Senator THURMOND. Thank you very much, Mr. Chairman. As a cosponsor of this bill, I am very pleased to support it strongly. Mr. Chairman, I want to congratulate you as the chairman of the Subcommittee on Immigration for the great job that you have done on this bill.

You have held many hearings. You have made many field visits. You have traveled extensively to fully understand this issue. You have done a magnificent job, and I just want to commend you on the record and let you know that I am wholeheartedly behind this bill. I will help you in every way I can.

I want to commend the administration, too, for backing this bill, Mr. Attorney General. I think it is a very important piece of legislation that is vitally needed. As chairman of the Judiciary Committee, we will do everything we can to expedite it and report it out.

I thank you for your appearance this morning.

Attorney General SMITH. Thank you.

Senator SIMPSON. Thank you very much, Strom. I appreciate that greatly.

If I might, I have just a few questions. The issue of employer sanctions continues to be renewed and discussed in a rather fascinating way, I might add, because if there is one thread of consistency throughout the House and the Senate, it is the absolute necessity of employer sanctions.

That has been well proved by the House on two previous occasions when they passed such legislation only to see it stall here in the Senate, and then it was expressed best here in the Senate by the vote of about 85 to 14 when there was an attempt to remove employer sanctions during the debate last August.

So I would say that that seems to be a rather prevalent part of the legislation. Why do you consider employer sanctions to be the cornerstone of immigration reform legislation?

Attorney General SMITH. Well, Mr. Chairman, as so many others who came to this subject, my original reaction was to oppose employer sanctions on the grounds that this would constitute yet another piece of regulation at a time when we were trying to reduce, not increase regulation.

But as I became immersed in the subject, particularly during the deliberations of the Cabinet level task force that was appointed by the President in early 1981, it became clear to me, as it has to so many others who have been involved in this subject, that, as I stated in my opening statement, the only remaining credible enforcement tool left is employer sanctions.

Employer sanctions are necessary to, in effect, reduce, hopefully eliminate, the pull factor which creates the attraction that brings aliens illegally into this country. It truly is the cornerstone of this program, and without employer sanctions, the program really is toothless.

Senator SIMPSON. It has been interesting. There has been much discussion of a GAO report on employer sanctions, and those who report on it sometimes spend a great deal of time on the 5-page overview rather than the 70-page report which states that these countries are considering new methods to enforce employer sanctions. Interestingly enough, Canada and West Germany, the Republic of West Germany, and France have all, in these last months, tightened their employer sanctions and their immigration laws in rather extraordinary ways.

I think that is of interest because as long as employer sanctions remain just a cost of doing business, nothing will take place, and we find some interesting things happening in those three countries and other countries with regard to the issue.

But employer sanctions has been discussed in another vein, and that is the possibility of increased employment discrimination. In your view, do you feel that employer sanctions will result in increased employment discrimination? I would be interested in your thoughts.

Attorney General SMITH. First, let me comment, if I may, about employer sanctions in other countries. In a trip that I recently concluded which included Hong Kong as well as France, I noticed that what you say is quite true. In France where they have had employer sanctions, they have not enforced them up until at least fairly recently, and as a result, they are quite ineffective.

In Hong Kong, however, where they also have employer sanctions, they have been rigorously enforced and have been highly successful in dealing with their illegal immigration problem. So as a result, I think it is certainly true that you cannot evaluate the effectiveness of employer sanctions merely by whether they are on the books. You have to also evaluate employer sanctions in terms of how well they have been enforced.

As far as discrimination is concerned, we are satisfied that the provisions of this bill guard very carefully against that possibility. Indeed, I would suspect that perhaps with this program in effect, discrimination would be reduced rather than increased. I think that there are safeguards built into the bill which would prevent discrimination in any form and we, of course, have had our civil rights division pass on that, and that is their conclusion.

Senator SIMPSON. Well, as the Nation's chief law enforcement person in every sense, do you feel that the current statutes under current law provide adequate enforcement tools available to remedy employment discrimination when it occurs? Will those laws need to be changed or augmented with the passage of any immigration reform?

Attorney General **Smith**. In our opinion, the laws do not need to be changed. They are adequate to protect against discrimination in any form.

Senator **Simpson**. The other issue you touched on with regard to your first impression of employer sanctions which matches mine when I first became aware of the issue. I rejected it when I first began in this work, because of the issue of an undue responsibility on employers, but we think that the employer sanctions provision of this bill places no burdensome responsibility on employers, especially in the area of determining the validity of documents which, "appear on their face to be genuine". How do you see that provision as being interpreted?

Attorney General **Smith**. Well, essentially, the requirements of the act are that an employer view the documents. He does not have to make judgments as to their authenticity except in obvious situations. In other words, if a document shows that a particular individual is 30 years younger than he appears to be or if the document has been deliberately tampered with or it indicates a female and the prospective employee is a male, obvious situations like that, the employer would make a judgment.

But except in those obvious situations, he would not be called upon to certify as to the authenticity of the document. His responsibility would be met if he viewed the documents and they appeared to be what they purported to be.

Senator **Simpson**. Do you feel that the employer sanctions provisions in this legislation as presented are enforceable and realistic? Can they be enforced properly?

Attorney General **Smith**. Yes to all of those questions. Needless to say, this is a new program, a new effort, and there will be a good deal of trial and error and experience that will need to be taken into account.

At the present time, in anticipation that this program will be enacted, the INS has undertaken preparatory arrangements, looking toward the additional enforcement responsibilities envisioned. It is not a small undertaking, but it is certainly one that we think has to be done and will be done.

But it will take some time to shake down, and I am sure, as I say, that we will be able to benefit from experience as time goes on. But we are satisfied that it is a program that can be effectively implemented.

Senator **Simpson**. I think all of us are concerned at the subcommittee level and the full committee that the INS have sufficient funds to plan and implement and manage these reforms as soon as they come to fruition.

Would the administration support this committee's efforts to include these costs in the 1984 budget request for the Department of Justice—the costs to be rescinded if the bill should not pass by the end of the fiscal year?

If we should wait to authorize the funds until the passage of the legislation, would the administration be in a position to support the appropriation of the necessary funds in a supplemental appropriations bill?

Attorney General **Smith**. In the event the bill was passed early enough in this session, we would certainly support a supplemental to the 1983 budget. If later in the session, we would support a budget amendment for the 1984 budget.

Senator **Simpson**. The administration favors a block grant program. That will be one of the keys in our discussion about how we assure that the local governments are not heaped upon with the additional cost after legalization, and this block grant program has been discussed now and previously to provide assistance to these State and local governments for costs arising from legalization.

Do you have any figures that you could possibly share with us, general figures, as to how much funding the administration might make available for such a program, recognizing last year that there was about $1.1 billion for 4 years.

If the two-tier legalization process remained the same, we are really probably observing 6 years there, 3 years temporary permanent resident status, and 3 more in permanent resident status.

I know that is a tough one to pin you with, but just any thoughts you have on that.

Attorney General **Smith**. We are, needless to say in this era of austerity, very concerned about costs. As you indicated, we have been talking in the range of a $1.1 billion block grant program and a total cost $1.7 billion over a 4-year period. We would be very concerned about any cost increases over and above that figure. Now, that is for 4 years.

I am really not in a position to talk about the last 2 years that would make up the 6 years you referred to, but it certainly is our current very strong recommendation that the costs be contained within the figures I mentioned.

Senator **Simpson**. How will you assure or assist in insuring that those participating in the legalization program are not now nor will be in the future simply a liability to the U.S. taxpayers by utilizing social service programs once they are legalized?

Attorney General **Smith**. We are talking about those who have been here for a significant number of years and who have become self-supporting and also self-supporting insofar as their dependents are concerned. That would certainly be one of the criteria involved in the legalization program.

Now, obviously, circumstances can arise which would make a difference in individual cases but basically, self sufficiency would be the requirement, and therefore, would, to that extent, tend to eliminate the problem of reliance on social services.

Senator **Simpson**. That is an interesting thing. I know you share my thoughts that in funding or in preparing for the funding on legalization, we find persons within the administration and within OMB and elsewhere who will try to make a comparison based upon the economic migrant population being the same as a refugee population which I think is totally unwarranted because the economic migrant is, one, young; often single; and here for one reason, to work. The refugee is here for a totally different set of reasons, meeting the test of a refugee under the U.N. and under the laws of the United States, and therefore, showing very different patterns of dependency on various programs. Do you find that so?

Attorney General SMITH. Well, there certainly would be no basis for providing a legalization program which would yield benefits that were greater than those available to refugees for the reasons that you have stated.

Senator SIMPSON. It is, at least, I think, being heard in the proper quarters that it is unwarranted to use those similar types of figures, especially as a shroud to the real issue that you just might not like the legislation, and that is good. I do not mind people saying that, but I like to get the other stuff out from under the table and flop it up on the top.

Just one other question. You have indicated administration support of a revised H-2 program. Now, there is the rub. That is going to be a very critical part of where we are, where we will get with this measure, because I think so few really understand the awesome requirements of agriculture.

We speak of the revised H-2 program, the streamlining of that program to meet temporary labor shortages. Generally if you could share your thoughts as to what elements you think should be included in such a program?

Attorney General SMITH. Well, certainly as I indicated in my opening statement, it is important that where American workers are not available that a mechanism be provided to admit foreign workers for a temporary period.

We think that, by and large, the provisions in the bill that passed the Senate last year and which are the basis for the present bill are appropriate for that purpose, and we would certainly support their retention.

Senator SIMPSON. I am going to be visiting with persons in your home State, your adopted state, with regard to that. That is, indeed, the California situation. I will refer to it as that. It is going to be an interesting one because it will be very difficult to receive support from anyone within the California delegation when you have employers resisting the bill and unions resisting the bill and Hispanics resisting the bill. There is no reason to vote for it. There is nothing there.

Yet that needs to be addressed, and the issue opened and see if we can get to the basic part of it, whether we have such a dependency on illegal, undocumented workers that people will go out of business if they do not use them or do we wish to have control over our borders, and never is it drawn more clearly than in California, and more clearly in this area.

Because if we can provide the temporary workers and temporary is the word I use, and have them readily available to meet the divergence of crops, then we might find ourselves with a modicum of support from that far Western State.

Attorney General SMITH. Well, Mr. Chairman, this is another example that this program is a long-term public interest effort. It does cut across a host of short-term special interests. That is just the nature of this problem.

This is one reason why I think the bill that was crafted by the Senate last year represented a compromise or a balancing of all of those interests. There is no way to satisfy any one of them totally.

The program, if it is going to be successful, is going to be one that takes into account all of those various considerations and comes up with a balanced approach, and we think that this bill has done that.

It is a very delicate kind of balancing operation. Certainly the H-2 program or the temporary worker program, whatever you want to call it, is a good example of that, because we do find employers on one side and other employers on the other side. The unions have their interests. Employees and workers have their interests, and certainly public officials and the public at large have their interests.

So it is a balancing operation. That is what is required, and we think that the Senate bill has done a very good job of striking a reasonable balance.

Senator **Simpson**. Well, I greatly admire the way in which you have gone before the California chambers of commerce, and the growers. Your staff has been available and accessible for that. It is an extraordinary effort you have done there.

I would just emphasize that I am very pleased at the continued support of the administration for the bill. If the Congress were to decide, and certainly there is a divergence right now between the House and the Senate, that the overall cap and changes in the preference system should be enacted at this time within the Immigration Reform and Control Act, would the administration continue to support the passage of the legislation?

Attorney General **Smith**. Our primary concern certainly is coming to grips with the problem of illegal immigration. If in order to accomplish that there were certain changes made in the legal immigration provisions, why, we likely would support the overall bill. Although, as I say, our thrust and current interest has to do with the illegal immigration problem.

Senator **Simpson**. Indeed, and I do understand that, and I appreciate that. Well, I commend you on your serious and continuing interest and your international grasp of the situation as you have traveled to other countries to determine the worth of employer sanctions and identifiers.

I mean, if they work in Hong Kong, they just might work somewhere else actually. You started as a student as I did and you have become an instructor in this cause, and I greatly appreciate it. Perhaps other members of the subcommittee will have questions. The record will be open until March 7, and those may be submitted to you.

I thank you very much for your willingness to be present again as we proceed on with this effort.

Thank you very much, Bill.

Attorney General **Smith**. Thank you, Mr. Chairman.

Thank you also for your efforts in this cause. I know it could not have gotten this far had you not done all of the many things that you have done.

Senator **Simpson**. Thank you very much.

The next two persons who will testify are Alan Nelson, Commissioner of the Immigration and Naturalization Service, Department of Justice and the Honorable Diego Asencio, Assistant Secretary for Consular Affairs, statutorily assigned to this function in committee and noted author.

STATEMENT OF HON. ALAN C. NELSON, COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE AND HON. DIEGO ASENCIO, ASSISTANT SECRETARY FOR CONSULAR AFFAIRS, DEPARTMENT OF STATE

Senator SIMPSON. In order of appearance, Al Nelson, please, if you would share with us your immediate thoughts. Nice to have you here. I keep coming across your tracks through the land. You have also made yourself accessible to groups on both sides so that they can vent themselves. I think that is a very important thing in this issue. It is not always fun, but it is very necessary.

Commissioner NELSON. Mr. Chairman, it is a pleasure to again be before you as you kick off the hearings on S. 529 and move it forward through the Congress as I know you plan to do.

My boss just testified and I think he has thoroughly covered a lot of the issues and has responded to your questions. I will just briefly summarize several of the comments from my prepared testimony which I will submit for the record.

Certainly, following the Attorney General, we in the administration support your reintroduction of immigration reform in S. 529. As you pointed out, and as did the Attorney General, it is a very well-balanced bill meeting the major needs of immigration reform, having the necessary elements of enhanced enforcement, humanitarian concern, meeting legitimate needs of employers, and providing a more efficient way to implement the immigration laws.

Certainly, your efforts last year in securing passage of your bill by the strong vote of 80 to 19 are indicative of the support that you have generated in the Senate. The need is even greater today. It has not diminished. It is even more important and essential that we move forward to enactment of legislation.

Let me touch on a few of the major areas. The backdrop, and, I think, as the Attorney General spoke in his testimony and in response to your questions, the real concern and even the more important concern today with our unemployment situation, is the level of illegal immigration and the increased flow of illegal immigration.

This unacceptable flow of illegals has destroyed much of the confidence and respect which our law deserves and, therefore, it must be controlled more effectively, not only by a lot of the administrative actions we are pursuing, but certainly by the statutory immigration reform that you are proposing.

Again, as the Attorney General has so well stated, the employer sanctions are clearly the cornerstone of the bill. There can be no bill without employer sanctions, and we must deal with this magnet of jobs that draw the illegals here.

The standards that you set forth in your bill for employer sanctions, of course, exact a knowledge of violation. We think the form procedures are very reasonable, a single form that is applicable to all, simple to fill out by the employer and by the employee. You do strike a very effective approach there.

You asked questions of the Attorney General on the issue of civil rights. We think there is no question that the provisions of your bill do safeguard civil rights. The testimony of the Attorney General, of Father Hesburgh, who was here last week, and the comments made by Chairman Rodino last year before the Rules Committee, make it clear that there is no legitimate civil rights concern for the bill, but rather a few interest groups have tried to use this as a bit of a smokescreen when they maybe just do not like some of those provisions generally.

But the existing laws, the fact, as the Attorney General mentioned, the Civil Rights Division has determined that there is no protection for any employer to try to hide behind employer sanctions as a reason to violate the laws, make it quite clear that there is no civil rights problem there. In fact, a much greater civil rights problem, if you will, is the American citizen or lawful alien who is deprived of a job by some illegal alien.

We have many examples of that, and certainly many of the Hispanics in the southern part of the United States are the people that are calling the Immigration Service most frequently, complaining about being deprived of jobs because of illegal aliens in place.

So we hope that this issue can be put to bed, or at least, as you say, on the table and be dealt with finally. We also believe that the penalty structure, which you set forth in your bill for employer sanctions, is effective, with appropriate notices and hearing, and that it is a progressive type of penalty structure which makes sense.

The Attorney General dealt with the employment verification requirements. Clearly, there must be a reliable means of determining employment eligibility as a fundamental part of the bill.

We think the use of existing documentation is a good approach, and as pointed out, your bill is reasonable in this 3-year process to develop a more effective system to determine what is, in fact, effective.

We are aware, of course, that there will be examples of document fraud. There are now. That will continue to be the case. But we have been making some good strides in our computerization and working with the Social Security Administration, and have developed a very effective fraudulent document laboratory. We are confident that this can go a long way to meet many of the problems that now exist, and will continue to exist under any circumstances with respect to fraudulent documents.

The area of legalization, another, of course, basic element of your bill, is realistic and humane. It is clear that this is meant to be a one-time proposal, and not intended to recur. We think your provisions for the 1977 and 1980 dates are fair and reasonable, and that they should be continued.

The standards also must be clarified, that people with felony or other serious criminal backgrounds would not be eligible. Also, the existing law that provides that people shall not be public charges is incorporated and must be understood to apply that we will not be bringing people in who will be public charges on the American taxpayers; these legalized people will be productive members of society.

We think that your provisions regarding not being eligible for certain benefits for a period of 3 years, or the first 3 years of the permanent residence, make good sense and are solid.

With the Attorney General, you have touched on the assistance to the States and local governments. Certainly, there is need for that. It is a balancing process of the costs, the responsibilities. I guess we all need to keep our eye on the target, that the costs are much greater if we do not do something, whether it is State, local, or Federal.

It is important that we deal with the matter, but do attempt to come up, as you do, with some effective approach with block grant, assistance to the States.

The implementation of legalization is an area that raises a lot of questions. I have to deal with that as the Administrator of the Immigration Service, and there are a lot of questions out there.

We have, as the Attorney General mentioned, worked very hard over the last 6 or 8 months, or really since the passage of the bill in August 1982, in the Senate, to go into some very detailed planning.

A lot of work has been done. It is not an easy job planning for legalization or employer sanctions, but we think we have devoted a lot of good effort. We are confident we can effectively implement both the legalization and the employer sanctions provisions.

It is important that any implementation of legalization not disrupt our normal business operations—and that is an assumption of our planning—and that funding will, as you have addressed in some of your questions, be forthcoming to cover that.

Also, of course, we are concerned, as we know interest groups, volunteer agencies, and others are, that there be a simple, nonthreatening method for the aliens to be legalized—a quick, a fair, and efficient procedure that will not disrupt normal INS operations and yet be sure that only those entitled will qualify.

We think that our implementation planning has accomplished this. We would be pleased to brief you and the committee and staff, as we have done to some extent already, on what we have done in that regard and in other areas. But we are committed, in summary, to effectively and efficiently implement legalization.

There are a number certainly of fine-tuning kind of amendments, as you have mentioned. Everyone has a lot of ideas, but we think there are ways to improve it. One thing we would suggest is that there be what we call a 3-plus-12 situation of legalization, a 12-month eligibility period rather than the 18-month, tacked onto the first 3 months that would be the final preparations after the bill is enacted, to allow the various processing to be put in place before the people would step forward.

We would be quite willing to have a provision that would protect those who would be prima facie eligible from deportation or exclusion during that first 3-month period and prior to their actual submission of their papers.

In the area of temporary foreign workers, again, your questions and discussion with the Attorney General have covered that. I think you have hit the issues. It is essential that we protect the U.S. workers. On the other hand, we must meet these temporary needs that we have in certain areas for temporary workers. A transition period seems essential. I think that was inherent in the Attorney General's comments, that this is a major, long-term piece of legislation that you are proposing.

We will have some time to adjust; therefore, there needs to be some transition, I think, in the H-2 temporary work area. This is a good type of approach that you are following.

We have been, in the Department of Justice, sitting down with the Department of Labor and the U.S. Department of Agriculture, and we have been meeting with growers and organized labor. It is very important that the Government and the private interests really make some hard efforts, along with your good offices, to work out both the regulatory and the statutory kind of procedures to meet the needs and, at the same time, avoid some of the problems.

The exclusion procedures within your bill, again, we think are fair and efficient. We must have a fast, efficient, and fair system in order to deal with the problem of mass arrivals. A lot of people think, well, we are trying to wipe out due process in this, and that is ridiculous.

We have provisions now dealing with stowaways and crewmen that are handled fairly and effectively and efficiently. This approach that your bill would have for those without any kind of documentation is essential and must be part of the bill.

We are dealing with large numbers, and if we cannot have a fair system we are going to be in trouble. All of that, of course, is consistent with a continuation of asylum, and that is an existing provision of the law that will continue. But, again, we have had a huge leap in numbers. There is no question that many people are using the asylum process as a way around the immigration laws.

There must be a better system—I think your bill addresses it—again, a fair and efficient, quick system, because without it we all lose.

The Attorney General has touched on—and I would just repeat—some other fine-tuning suggestions regarding the processing of asylum cases, and just to review those, that the statutory limit of the 70 immigration judges be removed. It should not be a fixed number in the statute. Also, that the current immigration judges be permitted to make asylum determinations once they have received the appropriate training, and that the jurisdiction of the U.S. Immigration Board be capable of expansion by regulation.

Another provision is that the provision of section 243—for "withholding of deportation"—be repealed because it creates confusion and is a duplicate system to asylum. We think those specific changes should be pursued.

I think we will not comment further on the cap and the numbers and the preferences. I think the Attorney General's comments have been directed to that.

Another area also mentioned by the Attorney General is that we need to develop a faster, more efficient, streamlined labor certification system. There are other provisions in the bill, regarding students and G-4 nonimmigrants, of which we are supportive of the basic thrust. Again, there might be a few fine-tuning types of provisions, but we think you have the basic elements solidly in hand.

Again, in summary, Mr. Chairman, I would like to applaud your fast action in reintroducing the immigration reform legislation and in moving it as you are. The need is critical. We all accept that. It is important that we move the matter promptly through the Senate and, likewise, concurrently, in the House.

Thank you very much.

[The prepared statement of Alan C. Nelson follows:]

PREPARED STATEMENT OF ALAN C. NELSON

Chairman Simpson and Members of the Subcommittee:

I am pleased to be here and to comment on S.529, the Immigration Reform and Control Act of 1983. It has been almost one year since I appeared before you and offered my comments on the Immigration Reform and Control Act of 1982, which passed the Senate on an overwhelming bipartisan vote of 80-19 but failed to pass the House before the end of the 97th Congress. In this past year nothing has occurred which reduces the need for this legislation. In fact, the need has increased and will continue until positive action is taken by Congress and we have the added legislative authority necessary to gain control over the entry and presence of aliens in our country. For these reasons, Mr. Chairman, I wish to express my appreciation, and the appreciation of the Administration, for your prompt action in introducing this vital legislation.

This legislation, which represents a tremendous amount of work by the Chairman, the subcommittee, and others, is a well balanced approach to the multiple immigration problems that we face in this country. It has the necessary elements of authority for enhanced enforcement of the law, humanitarian concern for aliens who have established strong equities in the United States, and provisions whereby the legitimate needs of employers may be met. It has the added advantage of providing a more efficient, workable law which can be implemented fairly.

The conditions which have led to our present problems in immigration are neither new or unusual. The United States has for many years presented an attractive lure to people from much of the world. The individual freedoms of its residents and the opportunity to better one's place in life has encouraged immigration since the very beginning of our country. Because of this, we have developed as a nation of immigrants with all the benefits which people from every part of the world can provide.

We must recognize, however, that there are limits to the number of immigrants which the country can reasonably accommodate and most of all, immigration must be a controlled process accomplished under the provisions of law. The Immigration Reform Act of 1983 recognizes the historical role of the United States as the receiver of immigrants while placing the necessary controls on immigration.

As stated before, we believe the legislation achieves the balance necessary for fair and controlled immigration.

Through the placing of sanctions on the hiring of illegal aliens or those who are not authorized to work in the United States, the bill addresses one of the primary reasons aliens enter illegally or after legal arrival, violate the conditions of their admission.

By providing for the legalization of aliens who have resided in our society for several years, the bill recognizes the reality of this situation and presents a humanitarian and realistic approach. To attempt a mass deportation or to ignore this population as we enforce employer sanctions would be disruptive and contrary to our democratic principles.

The bill recognizes that employers may have legitimate short-term needs for foreign workers especially as employers sanctions are implemented in agriculture or other industries and provides the means by which workers may be allowed to enter if their entry will not create a disadvantage for domestic workers.

Although we have discussed many of these points before, I would now like to comment on the specific provisions of S.529.

Illegal Immigration

While the actual number of illegal aliens is unknown, the most frequently cited numbers range from 3.5 to 6 million. The presence of large numbers of illegal aliens in the United States and the continuing entry of others is an unacceptable situation and has destroyed much of the confidence and respect which the law deserves. Immigration must be a controlled and orderly process which reflects the best interests of our nation.

Employer Sanctions

A cornerstone of the bill is the sanctions which would be imposed on the knowing hiring of aliens not authorized to work in the United States. Although there are other reasons for illegal immigration, employment is the most compelling. We feel that this provision is absolutely essential to gaining control of our borders; only through this means can we remove the magnet which attracts so many illegal aliens to our country.

The bill makes it unlawful to knowingly hire, recruit, or refer for employment an alien not authorized to be employed in the United States, and makes it unlawful to continue to employ an alien hired after the enactment of the statute knowing that the alien is not authorized to work in the United States. The bill requires that a person who hires, recruits, or refers an individual for employment must complete a form for each individual and attest under penalty of perjury that the persons' right to be employed has been determined through an examination of documents which identify the individual and show that he or she is eligible to be employed in the United States. An individual who seeks employment in the United States must complete a form and attest under penalty of perjury that he or she is a United States citizen, an alien who has been admitted for lawful permanent residence, or an alien who has been authorized for employment.

The Administration believes that these provisions are appropriate as a means of controlling illegal immigration to the United States while safeguarding civil rights. Equality of employment opportunity for United States citizens and lawful permanent residents is not diminished by this bill. The recordkeeping requirements of the bill balance the burden of additional paperwork with the need to provide employers with a means to prove that they have complied in good faith.

The bill provides a penalty structure based on the principle of progressive penalties which includes civil fines, injunctive remedies, and criminal penalties. Civil fines may be assessed only after notice has been provided and a hearing, if requested, has been conducted before an officer designated by the Attorney General. Repeated violations, or the failure to pay civil fines, will be brought before the appropriate United States district court.

Employment Eligibility Verification

A reliable means of determining employment eligibility is fundamental to employer sanctions. However, the Administration is opposed to the creation of a national identity card or system. We believe that the use of existing documentation provides an effective means for verifying eligibility and screening illegal aliens from participating in the work force. The bill adopts this pattern of eligibility verification but requires that within three years of enactment the President shall implement such changes as are necessary to establish a secure system of employment eligibility. That is a reasonable approach which will allow us an opportunity to evaluate the efficiency of relying on existing documentation and to determine what, if any, improvements are appropriate and feasible.

We would also note that the Administration is very conscious of the problem of document fraud, and we have worked to improve the security of existing documentation provided by federal, state, and local governments. The Immigration Service has cooperated with the Social Security Administration (SSA) and other agencies to reduce fraudulent claims in various entitlement programs. In addition, the Service's Fraudulent Document Laboratory and enforcement officers continue to work with state and local agencies regarding false or fraudulently secured documentation.

Legalization

The provisions of S.529 which allow the legalization of specified aliens who are in the United States illegally are a realistic and humane response to a circumstance which we intend not to allow to recur in the future.

The bill will allow permanent residence to be granted to aliens who have been in the United States illegally since January 1, 1977. Temporary residence may be granted to aliens who have been here illegally since January 1, 1980, and to Cubans and Haitians who have been in the United States on or after specified dates and are known to the Immigration Service. Aliens who initially qualify for temporary residence may apply after three years to have their status changed to permanent resident if they continue to reside in the United States and remain eligible under the other provisions of law.

Aliens who do not meet the standards for admission to the United States and whose residence would be contrary to the public interest would not qualify for permanent or temporary residence. This includes aliens who have been convicted for any felony or three or more misdemeanors committed in the United States and aliens who have assisted in the persecution of any person or account of race, religion, nationality, membership in a particular social group, or political opinion. Similarly, aliens who are not able to overcome the "public charge" exclusion of the Act will not be eligible for legalization.

The legalization provisions of S.529 are designed to insure that only aliens who are and will be productive members of our society can qualify for residence.

Benefits to Permanent and Temporary Residents

Aliens who are granted permanent residence under this provision are not eligible for three years for financial assistance furnished under Federal law. Aliens who are granted temporary residence are also ineligible for assistance during the period of temporary residence and three years after they are adjusted to permanent resident status.

Block grant assistance to States is provided to offset costs incurred by them in providing assistance to legalized aliens when it is required to meet emergency subsistence or health needs of those individuals and when it is required in the interest of public health.

Implementation of Legalization

The proposed legislation provides that aliens who believe they qualify for residence may apply for this benefit during an eighteen month period beginning on the date of enactment. It further provides that arrangements may be made with qualified voluntary agencies for the purpose of making the provisions of law known to the public and for the purpose of receiving applications for residence.

The Service will be given the task of legalizing a great number of aliens in a relatively short period of time. Extensive planning has been done since the Administration's Omnibus Bill was introduced in 1981. Our planning has been based on a number of assumptions or goals.

1. The program should not disrupt the normal business of the Service more than is absolutely necessary.
2. The program should provide a simple, non-threatening method for aliens to obtain information concerning their eligibility and to file applications.
3. Applications should be processed to completion as quickly as possible.
4. The procedures should guarantee to the extent possible that only eligible aliens receive benefits under the law.

A comprehensive implementation plan has already been developed incorporating these principles and the Service is confident that the legalization program contemplated by S.529 can be fairly and efficiently administered.

Recommendations

As the Attorney General has already indicated, the Administration supports the concept of legalization as provided in S.529. We do have certain recommendations however, which we feel will make those provisions more workable.

Rather than an application period which will begin on the date of enactment and run for 18 months we would recommend a 12-month application period to commence no sooner than three months after enactment. Such a delay in the receipt of applications is essential to allow the Service time to publish regulations, enter into the necessary contractual arrangements, begin the public information campaign and make other preparations.

As a corollary to this the statute should also contain language which would protect prima facie eligible aliens from deportation or exclusion during the first three months after enactment.

Temporary Foreign Workers

The Administration supports the goals of S.529 which is to protect domestic workers from adverse impacts due to foreign labor and to provide a legal means for the entry of temporary foreign workers when the need is clearly shown and that need cannot be met by domestic workers. This will be extremely important if we are to have sanctions against the hiring of illegal aliens and to avoid the harmful effects that shortfalls of domestic workers would have on some employers, particularly agricultural employers, as they make the transition from dependence on illegal workers to reliance on domestic workers.

Unlawful Transportation of Aliens

S.529 would amend Section 274 of the Immigration and Nationality Act to make it unlawful to bring an undocumented alien to the United States, even if that alien is presented to an immigration official and regardless of whether that alien is allowed to remain in the United States in parole status. This will resolve the problem created by the court decision in U.S. v. Anaya, et al., No. 80-231-CR-EPS, where persons who had transported Cubans in the Mariel boatlift were found not to have violated Section 274.

Exclusion of Undocumented Aliens

S.529 wisely restricts the right to an exclusion hearing to documented aliens. Aliens lacking entry documents would be subject to summary exclusion by an immigration inspector under proper supervisory control, similar to the existing procedures for crewmen and stowaways. There would be no administrative or judicial appeal in these cases. However, aliens who indicate a fear of persecution in the country where they last habitually resided based on race, religion, nationality, membership in a particular social group or political opinion will receive full and fair hearings to adjudicate their asylum claims.

This important provision will assist us greatly in handling the continuing flow of undocumented people and would be crucial in dealing with any future mass arrivals of visaless aliens.

Asylum Procedures

It is not surprising that proposals dealing with asylum occupy such a prominent part of your bill. There is a strong concern in Congress and in the Administration that the present asylum system has been shown to be seriously defective. The defects that have come to light since the enactment of the Refugee Act are not the result of any misdrafting, or misdirection; they are simply the result of a quantum leap in the numbers of persons who have applied for asylum. At the time of this hearing, there are approximately 86,000 asylum applications pending before the Immigration and Naturalization Service exclusive of those received from Cuban and Haitian boat arrivals. New applications are filed at the rate of 2,800 per month.

One difficulty we have with this section is the limitation on the number of immigration judges. The Administration has calculated that it would take a minimum of fifty trained asylum officers to handle just asylum claims even under expedited procedures. Therefore, the 70 immigration judges provided under S.529 to handle all types of administrative review including asylum would be woefully inadequate.

Another difficulty is that during the two year transition period none of the current immigration judges could hear asylum cases even if they were selected for permanent service. We believe these former "special inquiry offices" should be permitted to make asylum determinations after receiving specialized training.

Otherwise, it is our view that the revised asylum proposals contained in S.529 would allow for a fair, impartial determination of asylum claims, while at the same time avoiding the perplexing delays which have so often developed in adjudicating applications under the Refugee Act of 1980. Adoption of such proposals is essential to any comprehensive immigration reform bill.

United States Immigration Board

We support the provisions in Sections 122 and 124 and would join with the Attorney General in recommending only relatively minor additions or modifications to avoid statutory restrictions that would hamper the Department's ability to manage the workload.

Specifically we recommend that the statutory limit of 70 immigration judges be removed, that current immigration judges be permitted to make aslyum determinations once they have received specialized training in that area, that the jurisdiction of the

United States Immigration Board should be capable of expansion by regulations of the Attorney General, and that the "withholding of deportation" provisions of section 243(h) of the Immigration and Nationality Act should be repealed to eliminate confusion over a parallel asylum process.

The Immigrant Admissions System

S.529 proposes several changes in the system through which immigrants are admitted to the United States. It creates separate preference systems for family members and the immigration of workers or "independent" immigrants. The creation of two preference systems in place of the current single-track system clarifies the separate goals of family reunification and economic growth/cultural diversity and eliminates some of the inequities and confusion sometimes generated by the current system. Similarly, the reordering of preferences and the change in the emphasis given each preference within this two-track system will clarify priorities and reflect more closely the needs of the United States in terms of reunifying immediate families and bringing in persons who will benefit the country economically and culturally. S.529 retains the current first, second, and fourth preferences for family reunification, although the second preference is restricted to spouses and minor unmarried sons and daughters of permanent resident aliens.

S.529 does not continue the current fifth preference for brothers and sisters of adult U.S. citizens other than to clear the existing backlog of applicants in this category at a rate of 10 percent of the numerically restricted family visas each year, plus any numbers not used in the higher family reunification preferences.

Overall Cap and Numbers

S.529 allows immediate relatives and most special immigrants to immigrate without numerical restriction within the 425,000 worldwide total, 350,000 family reunification, and 75,000 independent immigrant limits. While we support some limit on immigration and, in fact, find this to be a desirable goal, we have reservations concerning a cap on total immigration. With a cap, increased immigration in these traditionally unlimited groups is of necessity at the expense of immigration in the family and independent preferences and from lower-demand countries. To the extent that immigration of immediate relatives and special immigrants continues to increase, the opportunity for others to immigrate will become increasingly limited. This trend will be especially true for those persons in countries sending over 20,000 numerically exempt immigrants a year since this excess would be subtracted from the 20,000 per country limit for numerically restricted immigration during the next year.

After reviewing the laws governing legal immigration, the Administration concluded that the existing laws are basically rational and fair, and that changes in the preference system bear little relation to the urgent problem of illegal migration. More specifically, we have had reservations about placing the immediate relatives of U.S. citizens within an overall cap, as over time such a change could limit the opportunity to reunite families in this country, a purpose historically animating our immigration laws. We do however, favor increasing the country limits of Mexico and Canada to 40,000 each.

Labor Certification

Both the Administration and S.529 recognize the inadequacies of the present labor certification system which has been criticized as being too slow and complicated. Your bill would provide a streamlined alternative to the present individual certification process by allowing the Department of Labor to certify shortages or over-supply of U.S. workers in certain occupations, using labor market information without reference to particular job openings. Presently, an employer is able to obtain labor certification by advertising a specific job opening and being unable to fill that position with a U.S. worker. S.529 would allow the Department of Labor to expand the existing "Schedule A" list of precertified occupations and to issue labor certification without reference to a specific job opening.

OTHER PROVISIONS

Students

S.529 would require a foreign student in the United States to depart the country and reside in the country of his or her nationality or last foreign residence for two years before he or she could immigrate to the United States. This requirement could be waived in the case of students in certain fields of study if they were offered teaching, research, or technical positions. There is, however, a limit of 1,500 waivers per year which could be granted to teachers and 4,500 which could be granted to those in research or technical fields.

We note with regard to these provisions that the placing of numerical limits on the waivers granted would require the Service to establish a rather complicated accounting and allocation system to control the number of waivers granted each year in each of the two categories. Additionally, it has been our experience that waiver provisions are not abused and that the absence of a numerical limit would not result in an excessive number of applications being granted.

For these reasons, it is recommended that the numerical limits on waivers be eliminated.

G-4 Special Immigrants and Nonimmigrant Visa Waiver

S.529 also addresses the problem of employees of international organizations and their dependents who often spend many years in the United States. It would provide special benefits for some of these. The bill also provides for nonimmigrant waivers for visitors from some countries. We support these provisions.

Conclusion

In conclusion, I again want to express my appreciation to the Chairman for the introduction of S.529 and the early hearing schedule which was established. As Commissioner of the Immigration and Naturalization Service, I am particularly aware of the critical need for the reforms contained in this legislation. Those reforms provide both the vehicle and the opportunity to rededicate ourselves to the fair and firm enforcement of our immigration laws. The Immigration and Naturalization Service looks forward to working with you and all the members of the subcommittee in that endeavor.

Senator **SIMPSON**. Thank you, Alan.

I acknowledge the presence of a member of the subcommittee, Senator Grassley, who has been a very persistent participant and a very patient and understanding member of this subcommittee in the last 2 years, and who brings a great deal to the subcommittee in every respect, and I appreciate it.

He has really been there, listening, learning, as I have. Right now we are going to go on to Ambassador Asencio's testimony, but if you have anything you might want to relate——

Senator **GRASSLEY**. Yes, Mr. Chairman. Mr. Nelson, you may recall that a year ago I brought up the issue of local law enforcement involvement in the area of immigration where certain conditions exist.

I urged at that time written agreements between the Justice Department and local law enforcement people when their help might be needed. It has come to my attention, Mr. Nelson, that you are moving in that direction. I appreciate your looking at that, and I look forward to receiving a copy of that final directive.

How far along is the implementation of that directive?

Commissioner **NELSON**. Thank you for the question and the comment, Senator Grassley. I appreciate your efforts throughout the legislation last year and the discussions we have had. I am pleased to announce that we are moving along effectively. Things in government never happen quite as rapidly as we would like, but the Attorney General just within the last few weeks has signed off on a new directive.

We have, in effect, rescinded what is known as the Griffin Bell directive. We are in the process of disseminating, or will be disseminating shortly, the new directive to our people.

We will be meeting with various groups. I think tomorrow, as a matter of fact, we have a meeting with a number of Hispanic groups that had some concerns and questions, to allow them to understand what we are doing and why.

We have had some discussions with local law enforcement, and will continue to do so. As we finalize the new directive, we will get that out more formally, and we appreciate your support and efforts in that regard.

Senator **Grassley**. You may remember that, in the context of proposing such agreements, protection of civil liberties was foremost among my concern.

I framed everything within the concept that it was better for the civil rights of the people, as well as for our Government, to have the rights and responsibilities and the conditions on which such arrangements were worked out very carefully delineated?

Commissioner **Nelson**. Right. I might just mention for the record, Senator, that I think one of the problems so often is the perception or the overpolarization of an issue. The Griffin Bell directive, for example, in its language was really not bad, but it was interpreted and perceived as an anticooperation arrangement between law enforcement and the Immigration Service.

Of course, that should not be the case. We made it clear in the new directive that we do want effective enforcement coordination, but in no way are we looking for local law enforcement to become immigration officers, nor, vice versa, for immigration officers to become local law enforcement.

But we must coordinate. It must have that kind of working relationship. I think that through the efforts of the Attorney General in setting up the Law Enforcement Coordinating Committees in some 70 or 80 places throughout the country, that there is an example of effective coordination, and we are pleased to be part of that.

Senator **Grassley**. Mr. Chairman, I have no other statement. I do want to thank you, though, for your kind comments on my participation in this endeavor, and I particularly thank you for the kind comments you made about me in your reintroduction of this bill this year.

Senator **Simpson**. Thank you.

Ambassador, would you proceed, please.

STATEMENT OF HON. DIEGO C. ASENCIO

Ambassador **Asencio**. Mr. Chairman, I am pleased to be here today to testify on S. 529, and I want to iterate Mr. Nelson's congratulations for introducing it so early in the session.

I am convinced that if we had not run out of time in the last session, we would now have a bill.

I would also like to say that one of the reasons you have become one of my culture heroes is the fact that you have taken what is essentially a negative public reaction, sometimes nativist, and turned it into a reform movement. I think you should be applauded for that, as should a number of your associates.

I would like to have my prepared statement presented as given, and with your permission, Mr. Chairman, to give you a summary of the points we are making.

Senator **Simpson**. Without objection.

Ambasaador **Asencio**. We continue to believe in the need for measures to regularize the status of some of those in the United States illegally, to reduce the pull factors that induce such illegal migration, to expedite administrative procedures relating to admission, exclusion and deportation, and to embody the solutions to the problems resulting from illegal migration in an overall package approach.

In connection with the regularization of status proposal, I would also note that it would serve not only our own interests but would diminish the concerns expressed by Mexico and other countries respecting the circumstances of their nationals in the United States.

I shall defer to the views of the agencies more directly affected by many of the issues covered in this legislation and address primarily those items of special interest to the Department of State in the substantive sense.

We sympathize with the quite reasonable desire to have better control over the number of people coming permanently to the United States. However—and in the context of the Attorney General's qualifier—we have not lost our substantial reservations about the wisdom and practicality of an overall cap on migration that includes immediate relatives.

We also hold the view that legal immigration is not such an immediate problem as illegal immigration. As opportunities for immigration by family members of resident aliens decrease under the numerical limit, there would be a natural, but in our view, improper incentive to naturalization solely to confer immigration benefits on relatives. This would lead, we believe, to a consequent increase, not only in immediate relative immigration, but also in demand for immigration by other relatives of U.S. citizens, such as unmarried and married sons and daughters.

In short, we foresee substantive repercussions arising from these proposals, although they would pose no practical problems for us in terms of implementation.

Such a diminution in family reunification immigration will also put the United States in an awkward position with respect to the Helsinki accords. As opportunities for Eastern Bloc relatives to be reunited in this country diminish, our credibility on the issue of divided families would also diminish.

We appreciate the general validity of the user fee concept. However, the Department has grave foreign relations and other reservations about the imposition of such fees at U.S. land border ports of entry.

The mere imposition of such fees would itself almost certainly appear to Mexico and Canada as inconsistent with the spirit of cross-border cooperation which the President has emphasized.

This reaction, based on a matter of principle, would at a minimum be another irritant in bilateral relations and could lead to reciprocal action.

In addition to these foreign relations concerns, we are disturbed by the essential impracticality of this provision and its seeming unfairness.

We are convinced it is not reasonably manageable. It is obvious that a simple unmanned toll-booth operation would not suffice, not the least of its shortcomings being that it could account only for the passage of the vehicle and not for the number of passengers, let alone their nationality.

Thus, the mechanics of collecting fees at land border ports could well create unthinkable delays in the inspection system itself, further exacerbating the negative reaction in the neighboring countries.

There would also probably be criticism of the requirement that aliens be charged the full costs of installations which are also used by U.S. citizens.

We welcome the consensus on the need for special asylum officers and are pleased that the bill calls for a consultative role for the Department of State. We believe State's expertise on foreign aspects bearing on asylum questions is essential to their proper adjudication.

We think we understand the motivations for the proposed change in the adjustment of status provisions, but feel it necessary to question their practicality. One can lose lawful status by means other than unauthorized employment. Unintentional overstays are not a root problem. Unauthorized employment is.

With regard to the students provision, we find little merit in dropping the distinction between private students and sponsored exchange visitors. We note also the contrast between our usual emphasis on family reunification and the waiver provision, which would make it possible for certain persons needed by industry to acquire resident status without residing abroad for 2 years, but would withhold that opportunity from the spouses of U.S. citizens and resident aliens.

We have no objections to the proposal to benefit certain international civil servants, their children, and surviving spouses who have long resided in the United States.

Of course, of particular importance to State is the nonimmigrant visa waiver provision. We are prepared to accept the concept of a pilot program, limited in both duration and the number of countries.

We are, however, disturbed by the failure to use a 2-year average as the qualifier for the program. There are economical and political events that skew data from one year to the next for reasons not bearing on whether a country's nationals are good nonimmigrant risks.

Use of only the prior year's data could result in such aberrations as a country not being found eligible which should be or, worse, being found eligible when it should not be.

We recognize that some of the proposals about which we have expressed reservations are predicated on philosophical issues on which reasonable persons can honestly differ. We believe, however, that some may be essentially technical or drafting matters and would be pleased to work with the committee members and staff to develop modifications that would be mutually satisfactory.

Senator SIMPSON. Thank you very much, Diego.

[The prepared statement submitted by Hon. Diego Asencio follows:]

PREPARED STATEMENT OF HON. DIEGO C. ASENCIO

PRINCIPAL WITNESS STATEMENT

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, I AM PLEASED TO BE HERE TODAY TO TESTIFY REGARDING S. 529, AND I CONGRATULATE YOU, MR. CHAIRMAN, FOR INTRODUCING IT SO EARLY IN THIS SESSION. ALTHOUGH IT DIFFERS IN SOME PARTICULARS FROM S.2222, ON WHICH I TESTIFIED LAST YEAR, IT CLOSELY PARALLELS THAT BILL AND MY TESTIMONY, THEREFORE, WILL BEAR A SIMILAR RESEMBLANCE TO MY EARLIER REMARKS ON IT.

WE CONTINUE TO BELIEVE, FOR EXAMPLE, IN THE NEED FOR MEASURES TO REGULARIZE THE STATUS OF SOME OF THOSE IN THE UNITED STATES ILLEGALLY, TO REDUCE THE "PULL FACTORS" THAT INDUCE SUCH ILLEGAL MIGRATION, AND TO EXPEDITE ADMINISTRATIVE PROCEDURES RELATING TO ADMISSION, EXCLUSION AND DEPORTATION. MOREOVER, WE CONTINUE TO SUPPORT STRONGLY THE CONCEPT OF ADDRESSING THE PROBLEMS RESULTING FROM ILLEGAL MIGRATION IN AN OVERALL "PACKAGE" APPROACH. IN CONNECTION WITH THE REGULARIZATION OF STATUS PROPOSAL, I WOULD ALSO NOTE THAT IT WOULD SERVE NOT ONLY OUR OWN INTERESTS BUT WOULD DIMINISH THE CONCERNS EXPRESSED BY MEXICO AND OTHER COUNTRIES RESPECTING THE CIRCUMSTANCES OF THEIR NATIONALS IN THE U.S.

I SHALL DEFER TO THE VIEWS OF THE AGENCIES MORE DIRECTLY AFFECTED BY MANY OF THE ISSUES COVERED IN THIS LEGISLATION AND ADDRESS PRIMARILY THOSE ITEMS OF SPECIAL INTEREST TO THE DEPARTMENT OF STATE IN THE SUBSTANTIVE SENSE.

ALTHOUGH WE SYMPATHIZE WITH THE QUITE REASONABLE DESIRE TO HAVE BETTER CONTROL OVER THE NUMBER OF PEOPLE COMING PERMANENTLY TO THE UNITED STATES, WE HAVE NOT LOST OUR SUBSTANTIAL RESERVATIONS ABOUT THE WISDOM AND PRACTICALITY OF AN "OVERALL CAP"

ON IMMIGRATION NOR OUR VIEW THAT LEGAL IMMIGRATION IS NOT SUCH AN IMMEDIATE PROBLEM AS ILLEGAL MIGRATION. WE BELIEVE THAT SUCH A CAP WOULD INEVITABLY CREATE AN UNHEALTHY TENSION BETWEEN AMERICAN CITIZENS AND LAWFUL PERMANENT RESIDENTS WHO WISH THEIR CLOSE RELATIVES TO BE ABLE TO JOIN THEM IN THE UNITED STATES AND WOULD ALSO PROVIDE AN UNWORTHY INCENTIVE TO NATURALIZATION. THE "CAP" PROVISION IN THIS BILL DOES NOT CREATE DIRECT COMPETITION BETWEEN THESE CLASSES AS SOME OTHER SUCH PROPOSALS HAVE. IT IS INDIRECT, IN THAT THE NUMBERS AVAILABLE TO THE CLOSE RELATIVES OF PERMANENT RESIDENTS WILL BE REDUCED BY THE AMOUNT OF IMMIGRATION BY SUCH RELATIVES OF AMERICAN CITIZENS IN THE PRIOR YEAR. NONETHELESS, THE COMPETITION WILL BE APPARENT.

THE PROPOSAL IN THIS BILL WOULD IMMEDIATELY CUT VISA NUMBERS CURRENTLY AVAILABLE TO THE OTHER RELATIVE CLASSES SUBSTANTIALLY. THAT MAY NOT SEEM TOO ALARMING WHEN CONSIDERED IN CONJUNCTION WITH THE REDUCTION IN FAMILY PREFERENCE CATEGORIES. HOWEVER, FOR A BETTER UNDERSTANDING OF THIS IMPACT, WE SHOULD LOOK TO THE "FAMILY" CLASS OF GREATEST CONCERN TO ALL OF US -- THE SECOND PREFERENCE, BENEFITTING IMMEDIATE FAMILY OF PERMANENT RESIDENTS (ROUGHLY EQUIVALENT TO THE IMMEDIATE RELATIVES OF U. S. CITIZENS).

SOME KEY FIGURES ARE EASILY MISUNDERSTOOD. FOR EXAMPLE, THE CURRENT SECOND PREFERENCE CLASS, SPOUSES AND UNMARRIED SONS AND DAUGHTERS OF LAWFUL PERMANENT RESIDENTS, HAS AVAILABLE TO IT 26% OF THE WORLD-WIDE CEILING, PLUS NUMBERS UNUSED BY FIRST PREFRENCE APPLICANTS. IN PRACTICE, AS THE FIRST PREFERENCE USES ONLY ABOUT 3% OF THAT CEILING, THIS MEANS THAT SECOND PREFERENCE REALLY HAS ACCESS TO 43% OF THE PRESENT 270,000 LIMIT, THAT IS, ABOUT 116,000. UNDER S.529, SECOND PREFERENCE WOULD BE ENTITLED TO 65% OF THE NUMBERS FOR FAMILY REUNIFICATION PLUS FALLDOWN FROM FIRST

PREFERENCE. THAT WOULD, MISLEADINGLY, APPEAR AT FIRST BLUSH TO BE A SIGNIFICANT INCREASE, ONE THAT MIGHT WELL REDUCE SOME OF THE DISTURBING DELAYS THAT ARE ENCOUNTERED BY SECOND PREFERENCE APPLICANTS IN SOME COUNTRIES.

REGRETTABLY, HOWEVER, THE BASIC AMOUNT TO WHICH THE PERCENTAGES WOULD BE APPLIED WOULD BE MUCH SMALLER UNDER S. 529 THAN IN TODAY'S LAW. IN ALL PROBABILITY IT WOULD GET STILL SMALLER WITH EACH PASSING YEAR BECAUSE OF INCREASING DEDUCTIONS OF IMMEDIATE RELATIVES FROM THE FAMILY REUNIFICATION CEILING. AS OPPORTUNITIES FOR IMMIGRATION BY FAMILY MEMBERS OF RESIDENT ALIENS DECREASE UNDER THE NUMERICAL LIMITS, THERE WOULD BE A NATURAL -- BUT IN OUR VIEW IMPROPER -- INCENTIVE TO NATURALIZATION SOLELY TO CONFER IMMIGRATION BENEFITS ON RELATIVES. THIS WOULD LEAD, WE BELIEVE, TO A CONSEQUENT INCREASE NOT ONLY IN IMMEDIATE RELATIVE IMMIGRATION BUT ALSO IN THE DEMAND FOR IMMIGRATION BY OTHER RELATIVES OF U. S. CITIZENS, SUCH AS UNMARRIED AND MARRIED SONS AND DAUGHTERS.

THUS, EVEN WITH THE PROPOSED DELETION OF ADULT SONS AND DAUGHTERS FROM THE SECOND PREFERENCE, THE SQUEEZE ON THIS PREFERENCE WOULD GET WORSE RATHER THAN BETTER. IN SHORT, WE FORESEE SUBSTANTIVE REPERCUSSIONS ARISING FROM THESE PROPOSALS, ALTHOUGH THEY WOULD POSE NO ADMINISTRATIVELY PRACTICAL PROBLEMS FOR US IN TERMS OF IMPLEMENTATION.

ASIDE FROM THESE CONSIDERATIONS, THIS COMPETITION BETWEEN IMMEDIATE FAMILY OF CITIZENS AND THE SAME RELATIVES OF RESIDENT ALIENS SEEMS SERIOUSLY AT ODDS WITH THE TRADITIONAL EMPHASIS ON FAMILY REUNIFICATION IN U.S. IMMIGRATION POLICY. IN ADDITION TO THIS CENTRAL CONCERN, THE STATE DEPARTMENT MUST ALSO BEAR IN MIND PROSPECTIVE ADVERSE REACTIONS BY SOME FOREIGN GOVERNMENTS WHICH WILL VIEW THIS AS DISCRIMINATORY AGAINST THEIR NATIONALS.

NOT THE LEAST OF OUR CONCERNS WITH REGARD TO THE FORMER FACTOR IS THAT SUCH A DIMINUTION IN FAMILY REUNIFICATION IMMIGRATION WILL PUT THE UNITED STATES IN AN AWKWARD POSITION WITH RESPECT TO THE HELSINKI ACCORDS. WE FREQUENTLY DRAW TO THE ATTENTION OF EASTERN BLOC COUNTRIES THEIR RESPONSIBILITY TO FURTHER -- OR AT LEAST NOT TO IMPEDE -- FAMILY REUNIFICATION. THERE ARE, AT ANY GIVEN TIME, A NUMBER OF SO-CALLED "DIVIDED FAMILY" CASES THAT WE ARE PURSUING, OFTEN AT THE BEHEST OF MEMBERS OF CONGRESS. AS OPPORTUNITIES FOR THOSE FAMILIES TO BE REUNITED IN THIS COUNTRY DIMINISH, AS THEY WOULD UNDER THIS BILL, OUR CREDIBILITY ON THIS ISSUE WOULD ALSO DIMINISH.

WE HAVE SIMILAR FOREIGN RELATIONS RESERVATIONS ABOUT THE ELIMINATION FROM THE PREFERENCE SYSTEM OF UNMARRIED SONS AND DAUGHTERS OF RESIDENT ALIENS AND OF BROTHERS AND SISTERS OF ADULT AMERICAN CITIZENS. THE FORMER DELETION WILL ALSO BE VIEWED AS DISCRIMINATORY, INASMUCH AS NOT ONLY UNMARRIED BUT MARRIED SONS AND DAUGHTERS OF CITIZENS WILL STILL BE GRANTED PREFERENCE. THE DELETION OF SIBLINGS IGNORES THE CULTURAL TRADITIONS OF MANY AMERICAN CITIZENS OF DIVERSE ORIGINS. THE GOVERNMENTS OF THEIR RELATIVES WILL NOT BE IMMUNE FROM IMPORTUNINGS AT SUCH A TURN OF EVENTS, AND WILL PROBABLY NOT HESITATE LONG TO EXPRESS THEIR CONCERNS TO US.

WE APPRECIATE THE GENERAL VALIDITY OF THE "USER FEE" CONCEPT. HOWEVER, THE DEPARTMENT HAS GRAVE FOREIGN RELATIONS AND OTHER RESERVATIONS ABOUT THE IMPOSITION OF SUCH FEES AT UNITED STATES LAND BORDER PORTS OF ENTRY. THE MERE IMPOSITION OF SUCH FEES WOULD ITSELF ALMOST CERTAINLY APPEAR TO MEXICO AND CANADA AS INCONSISTENT WITH THE SPIRIT OF CROSS-BORDER COOPERATION WHICH THE PRESIDENT HAS EMPHASIZED. THIS REACTION, BASED ON A MATTER OF PRINCIPLE, WOULD AT A MINIMUM BE ANOTHER IRRITANT IN BILATERAL RELATIONS AND COULD LEAD TO RECIPROCAL ACTION.

IN ADDITION TO THESE FOREIGN RELATIONS CONCERNS, WE ARE DISTURBED BY THE MANDATORY CHARACTER OF THE PROVISION IN THIS BILL, ITS ESSENTIAL IMPRACTICALITY, AND ITS UNFAIRNESS.

WE ARE CONVINCED IT IS NOT REASONABLY MANAGEABLE. IT IS OBVIOUS THAT A SIMPLE UNMANNED TOLL-BOOTH OPERATION WOULD NOT SUFFICE. IT IS NOT JUST A QUESTION OF LACK OF ACCESS TO U.S. COINAGE; THE FLUCTUATING EXCHANGE RATES WOULD REQUIRE FREQUENT ADJUSTMENT OF THE AMOUNT TO BE COLLECTED. MORE TO THE POINT, HOWEVER, IS THE FACT THAT SUCH A SYSTEM COULD ACCOUNT ONLY FOR THE PASSAGE OF THE VEHICLE AND NOT FOR THE NUMBER OF PASSENGERS, LET ALONE THEIR NATIONALITY.

THUS THE MECHANICS OF COLLECTING FEES AT LAND BORDER PORTS WHERE INDIVIDUAL ALIENS OR SMALL GROUPS APPROACH THE INSPECTION STATION, USUALLY BY CAR, BUS, OR RAIL, COULD WELL BECOME SO COMPLICATED AS TO CREATE UNTHINKABLE DELAYS IN THE INSPECTION PROCESS ITSELF. SUCH A RESULT COULD ONLY EXACERBATE THE NEGATIVE REACTION IN THE NEIGHBORING STATES CAUSED BY THE IMPOSITION OF THE FEES.

FINALLY, A SIGNIFICANT PROPORTION OF THE BORDER CROSSERS ARE AMERICAN CITIZENS WHO ARE ALSO "USING" THESE PORTS AND THEIR SERVICES, AND WE BELIEVE THERE WOULD BE JUSTIFIABLE CRITICISM OF THE REQUIREMENT THAT ALIENS BEAR THE FULL WEIGHT OF THE COSTS OF MAINTAINING THEM.

WE WELCOME THE CONSENSUS ON THE NEED FOR SPECIAL ASYLUM OFFICERS AND ARE PLEASED THAT THIS BILL CALLS FOR A CONSULTATIVE ROLE FOR THE DEPARTMENT OF STATE. WE BELIEVE STATE'S EXPERTISE ON FOREIGN ASPECTS BEARING ON ASYLUM QUESTIONS IS ESSENTIAL TO THEIR PROPER ADJUDICATION. INDEED, THE REASON WE PREFER A LEGISLATIVE MANDATE FOR SUCH CONSULTATION TO THE CURRENT RELIANCE ON THE SERVICE'S REGULATIONS IS BECAUSE THE CURRENT STATUTE DOES NOT MAKE THIS CLEAR.

WE THINK WE UNDERSTAND THE MOTIVATIONS FOR THE PROPOSED CHANGES IN THE ADJUSTMENT OF STATUS PROVISIONS, BUT FEEL IT NECESSARY TO QUESTION THEIR PRACTICALITY. IN EFFECT, THE SUBSTITUTION OF "FAILED TO MAINTAIN CONTINUOUSLY A LEGAL STATUS" FOR THE PRESENT PROSCRIPTION AGAINST UNAUTHORIZED EMPLOYMENT IS A REGRESSION TO THE ORIGINAL VERSION OF SECTION 245 AS ADOPTED IN 1952 -- A VERSION SO UNWORKABLE THAT THE CONGRESS AMENDED IT IN 1958 TO ELIMINATE THE ADMINISTRATIVE SUBTERFUGES THAT HAD BEEN CREATED TO GET AROUND IT. IT MUST BE REMEMBERED THAT ONE CAN LOSE LAWFUL STATUS BY MEANS OTHER THAN UNAUTHORIZED EMPLOYMENT. UNINTENTIONAL OVERSTAYS ARE NOT A ROOT PROBLEM. UNAUTHORIZED EMPLOYMENT IS.

MORE IMPORTANT, AT LEAST FOR US, SUCH A PROVISION DOES NOT RENDER INDIVIDUALS INELIGIBLE FOR IMMIGRATION. IT SIMPLY FORCES ON THEM AN UNNECESSARY TRIP ABROAD --FROM A PRACTICAL POINT OF VIEW -- TO OBTAIN AN IMMIGRANT VISA, THEREBY INCREASING BOTH OUR WORKLOAD AND, INEVITABLY, THE PRESSURES ON US (FROM MEMBERS OF CONGRESS AMONG OTHERS) TO PROCESS SUCH CASES AT OUR POSTS IN CANADA AND OTHER NEARBY AREAS. THAT WAS THE EFFECT IN THE PAST. UNFORTUNATELY, THERE IS NO REASON TO BELIEVE IT WOULD NOT BE THE EFFECT IN THE FUTURE.

WITH REGARD TO THE STUDENTS PROVISION, WE FIND LITTLE MERIT IN DROPPING THE DISTINCTION BETWEEN PRIVATE STUDENTS AND SPONSORED EXCHANGE VISITORS AND HAVE TO WONDER WHETHER FOREIGN GOVERNMENTS WILL NOT ALSO BE CONFUSED BY THIS BLURRING OF PURPOSE. WE WOULD ALSO NOTE THE CONTRAST BETWEEN OUR USUAL EMPHASIS ON FAMILY REUNIFICATION AND THE WAIVER PROVISION, WHICH WOULD MAKE IT POSSIBLE FOR PERSONS NEEDED BY INDUSTRY TO ACQUIRE IMMIGRANT STATUS WITHOUT RESIDING ABROAD FOR TWO YEARS BUT WOULD WITHHOLD THAT OPPORTUNITY FROM THE SPOUSES OF U.S. CITIZENS AND RESIDENT ALIENS.

WE HAVE NO OBJECTION TO THE PROPOSAL TO BENEFIT CERTAIN INTERNATIONAL CIVIL SERVANTS, THEIR CHILDREN, AND SURVIVING SPOUSES WHO HAVE LONG RESIDED IN THE UNITED STATES.

FINALLY, AND OF PARTICULAR IMPORTANCE TO STATE, IS THE NONIMMIGRANT VISA WAIVER PROVISION. WE BELIEVE THAT A WAIVER UNDER THE BROADER TERMS WE ORIGINALLY PROPOSED WOULD PROVE TO BE EFFECTIVELY MANAGEABLE. HOWEVER, BELIEVING ALSO THAT, IF THE PROGRAM WERE INITIALLY LIMITED AS PROPOSED IN THIS BILL, THE CONGRESS WOULD, IN FACT, EXTEND AND EXPAND IT, WE ARE PREPARED TO ACCEPT THE CONCEPT OF A PILOT PROGRAM, LIMITED IN BOTH DURATION AND THE NUMBER OF COUNTRIES.

WE ARE, HOWEVER, DISTURBED BY THE FAILURE TO USE A TWO-YEAR AVERAGE AS THE INDICATOR. THERE ARE ECONOMIC AND POLITICAL EVENTS THAT SKEW DATA FROM ONE YEAR TO THE NEXT FOR REASONS NOT BEARING ON WHETHER A COUNTRY'S NATIONALS ARE GOOD NONIMMIGRANT RISKS. USE OF ONLY THE PRIOR YEAR'S DATA QUITE PROBABLY WOULD RESULT IN SUCH ABERRATIONS AS A COUNTRY NOT BEING FOUND ELIGIBLE FOR THE PROGRAM WHICH SHOULD BE OR, WORSE, BEING FOUND ELIGIBLE WHEN IT SHOULD NOT BE.

WE RECOGNIZE THAT SOME OF THE PROPOSALS ABOUT WHICH WE HAVE EXPRESSED RESERVATIONS ARE PREDICATED ON PHILOSOPHIC ISSUES ON WHICH REASONABLE PERSONS CAN HONESTLY DIFFER. WE BELIEVE, HOWEVER, THAT SOME MAY BE ESSENTIALLY TECHNICAL OR DRAFTING MATTERS AND WOULD BE PLEASED TO WORK WITH THE COMMITTEE MEMBERS AND STAFF TO DEVELOP MODIFICATIONS THAT WOULD BE MUTUALLY SATISFACTORY.

Senator SIMPSON. Some questions. Al Nelson, first. There are some obvious things you indicated as to the need for the legislation having increased. What are your latest apprehension figures and what do they reflect as an increase in illegal immigration over the past year?

Commissioner NELSON. I do not have all the exact figures. Let me just throw a few out, if I might, and we can certainly provide the more detailed ones. But as I think has become known, since the beginning of this year there have been substantial increases along the Mexican border.

For example, last Sunday, or the Sunday before, we had 2,000 people apprehended by the Chula Vista border patrol, at the crossing near San Diego. Normally, 1,000 is a high number. Lately we have been getting up in the 1,500's; now 2,000. So there is no question that increased numbers are coming, and that the numbers for January and February, to the extent we have them show a fairly dramatic increase. I will provide the specific figures to the committee.

Senator SIMPSON. If you would, please, at all points.

Commissioner NELSON. Yes, sir.

Senator SIMPSON. You mentioned that you have been working with other agencies to obtain a more secure documentation with existing identifiers. Could you briefly describe your efforts in that area?

Commissioner NELSON. First of all, we of course internally have been developing and working toward more computerization and automation that is so essential in all of our activities. As we develop better automation, we can tie into systems with the Social Security Administration, with the Department of Education regarding student loans, with the Department of Labor on a number of areas of unemployment benefits and other workers' compensation type benefits.

We have developed a number of these programs, and we are working toward having them on a broader basis to give us the computer information from these other departments, and they from us, that will enable better tracking of illegal aliens, who are improperly drawing benefits.

We do plan to continue those, and as we automate more, we will be able to do more of that.

Senator SIMPSON. Concerning the voluntary agencies who are currently representing aliens in immigration courts, how do you plan to properly monitor the use of legalization expenditures, which will have to come to the voluntary agencies, in the event a voluntary agency would represent an alien, say, after a claim had been denied? How do you anticipate that? Can you elaborate on—I realize this is so tentative—but can you elaborate on your expanding the reference to voluntary agencies to include other organizations that we do not normally have categorized as voluntary agencies?

Commissioner NELSON. You have asked several questions. I will try to answer them as I go along, Senator.

We do feel that it would be appropriate that the legislation allow voluntary agencies, as currently defined, together with other local, nonprofit types of organization, or possibly even local government to assist us with the legalization program. But the current legislative provision should be broadened, because in certain areas, local governments or private organizations are going to be more effective than in others. So we think there ought to be a fairly broad number of outside agencies that could be utilized in order to be most effective.

Clearly, with the voluntary agencies, or any organization, there needs to be some clarification of the roles which often can be in conflict, of the advocate versus the processer, and that the processing role of the voluntary agency, or any other group that would do it, must be separated from the advocacy role, so that they do not get into the problem of conflict of interest.

We are going to have to work with them to be sure that we have the kind of guidelines that are effective for everybody. We have had a number of meetings with the voluntary agencies during the last year, and we plan to continue those because there are a lot of questions. We think that with good faith and open discussions we will reach the kind of arrangements that will make sense for them and for us.

You mentioned another thing, the auditing. We will need to have an effective auditing mechanism for voluntary agencies, for ourselves, for all aspects of the legalization program. Clearly, there will be no ability to review, in detail every claim that comes along.

There will have to be some post-audit procedures, much like the Internal Revenue Service utilizes in our tax situations.

Senator SIMPSON. You say you have made beginning preparations, in anticipation of legalization legislation, and that is so. And then, of course, we have the budget issue depending on whether the legislation would pass or not. We would have to have a supplemental appropriation, if there is nothing in there, until we actually get it done.

Could you describe the things you have done in anticipation of the legalization and how many positions you think that the INS would need to carry out the legislation as we deal with illegal immigration?

Commissioner NELSON. Regarding the positions, of course a good part of the work, the prescreening type work, would be contracted out to the voluntary agencies or others, and that would take care of a big part of it.

In addition, there no doubt would be needed additional numbers of Government workers to supplement the normal work force during the processing period. One thing we would propose for consideration would be some ability—which I believe was used by the FAA regarding air controllers—where we could bring back some retired INS or other Government people, being sure they would not lose their retirement benefits, for this very limited period, because we are talking about a year to 2 years to do the processing.

We do not want to increase the permanent work force by large numbers for a temporary function. Now, the exact number of people still needs to be developed. A lot would depend, of course, on the eligibility dates and the various criteria that the bill would come out with.

We do think it is essential, as I mentioned in my earlier testimony, Mr. Chairman, that we not disrupt the normal operations of

INS. That is a very important thing. Therefore, the use of the outside agencies and the additional temporary people, together with, of course, the appropriate budget moneys that you mentioned, are very important.

It is important for the legalization program that we have some funds to deal with initially, since, if the bill passes during calendar 1983, we would be at a point in the budget cycle that could be very difficult. We must have immediate money for the start-up costs of implementation.

Of course, it is understood that the cost of processing legalization will be washed out with the income received by the applications, but there will need to be some advance moneys in order to do the initial processing.

Senator SIMPSON. A quick question on asylum procedures. What percent of applications are processed annually and what steps are being taken to adjudicate more of these claims? Is the backlog increasing, where are these applications coming from, which countries? What is the percentage of meritorious asylum claims? That is an area that continues to concern me.

Commissioner NELSON. The backlogs are increasing even though the number that we are processing has increased dramatically. Again, I do not have the exact figures here, but I believe in the last year we processed well over 10,000 as opposed to some 5,000 the year before, with roughly the same staff, so we are moving the figures up. But the numbers being filed are 2,500, to 2,800 a month, and we are up to 130,000 or more asylum applications. There is no question that the procedure is bogged down, and I would also accept the fact that the Government is partly responsible for that, with our own laborious procedures.

We are, but on the other hand, people are using the asylum process, as I mentioned, as a way around the immigration laws, because they realize they can buy a couple years of time by just filing claims and going through all the various hoops.

That is why the type of provisions in your bill are so essential. As to the number that are meritorious, of course, in the Haitian situation in Florida, unfortunately we are having a little bit of a problem down there. The cases are not going forward because the immigration judges are not allowed to process the Haitians without attorneys. Those that have come to a final determination have, as we felt, indicated that very few of the claims are meritorious; in fact, there are many economic migrant situations.

In the El Salvador area, again, a very heated area, the numbers approved are not large. I think we are talking about 7 to 10 percent currently being approved for asylum in the Salvador cases.

Senator SIMPSON. Chuck, do you have any questions? I have taken about 10 minutes, 5 or 10.

Senator GRASSLEY. Thank you.

Is there any new information you can give us on the social security cards being printed on bank note paper in an effort to make it more difficult, to forge, how that is working out. Has it been implemented?

Commissioner NELSON. I am not quite sure, Senator, just what the status of the implementation is. I am probably like you on that.

I would have to defer to the Social Security Administration as to just their timetable is.

Senator **Grassley**. So then there is nothing you could report at this meeting as to whether or not that is going to help the Immigration Service?

Commissioner **Nelson**. It certainly will help us. I think anything we can do, Senator Grassley, to improve any of our existing documents, such as the social security card——

Senator **Grassley**. But there is no track record on that at this point, it is too early?

Commissioner **Nelson**. No, sir, it is too early.

Senator **Grassley**. But they are being printed, though, is that true?

Commissioner **Nelson**. Well, I think so, but I will have to defer to social security——

Senator **Simpson**. Excuse me, Al, I have to interrupt. I have to appear at EPW for about 10 minutes on a rule change that I am sponsoring. If you could handle it for no more than 15 minutes, I promise I will be back. Do not leave.

Senator **Grassley**. Mr. Nelson, Senator McClure has introduced a bill which would essentially curtail the open fields doctrine for agricultural employers. What effect would this legislation have on enforcement, and what is your response to the agricultural employers' concerns that you have to obtain a proper search warrant in order to enforce the law where other businesses are concerned, but not where agriculture is concerned?

Commissioner **Nelson**. Senator, we think that type of provision would be extremely damaging to our enforcement efforts in the agricultural area, and as we vigorously opposed it last year, we vigorously oppose it again this year.

We think, again, it does not really relate to the honest concerns, but is an attempt to try to forestall effective enforcement. The courts of the country on numerous occasions have clearly distinguished between the open lands and the enclosed premises, either factory or house. They are entirely different fourth amendment standards and provisions, so there is no constitutional basis to require a search warrant there.

We do in the enforcement efforts, of course, freqently obtain consent. We must have reasonable information before we proceed. We do not arbitrarily or at random go moving into open lands.

The other aspects are very practical. With the open lands, there is often a question of ownership. The work forces that are on those fields move rapidly from one to the other. It could be very difficult in terms of time and effort and documentation to get the search warrant.

We would still have to enforce the law, and we would just have to do so by other means, which might in many ways be tougher for some of those pushing that. We think it, frankly, is a naive proposal, and would very strongly oppose it. It would not accomplish the results that those that contend that it would somehow do.

Senator **Grassley**. On another point, there has been recently a lot of publicity on a relatively few deportations that actually take place after a final order has been entered. Could you tell us why and have you taken steps so that in the future, we will see more deportations effected after a final order has been signed?

Commissioner NELSON. That has been a problem, and again, it ties in with some of the similar elements that we faced in the sensitive type of issues, where we all are strong believers in an effective legal system and due process, and I will stand up as strong as anybody on that.

But we do have a system, unfortunately, that can be bogged down by many, many dilatory tactics that can delay and, therefore, often avoid deportation. I think it is a fair thing to say that just by being here for a long period of time that the alien often wins. So you have to balance the effective legal system with the need for a more effective and quick system. I think the bill addresses a lot of those issues.

Now, we have—again, you get into manpower considerations and resource considerations. Some of the newspaper articles that you might be alluding to are entirely inaccurate in terms of numbers. We do effect substantial numbers of deportations. But the problem that is inherent in the question is a valid one we must continue to deal with.

Again, Senator, we continue to introduce within INS, automation. We have just put into effect a nonimmigrant information system that will allow us to better track those coming into the country as visitors and those leaving, and a record of those who are not leaving on time.

A number of our deportation control methods are likewise automated. All this is enhancing our ability to deport those that are under final orders of deportation.

Senator GRASSLEY. Our legalization program is conditioned upon increased enforcements. What steps are being taken to increase enforcement and what increases can we expect?

Commissioner NELSON. Well, clearly, the legalization in the bill is tied in, I think both philosophically and practically, to the need for employer sanctions. I think that distinction, as the Attorney General stressed, is very important. People will say legalization is bad, rewarding lawbreakers, and that, but the point is that when you tie it with employer sanctions, it does provide some workers—there is an aspect there. It has a practical aspect of not being able to deport large numbers, and so forth. But legalization alone is not feasible. It has to be tied in with employer sanctions law itself, and then it will be very significant.

We firmly believe that the American ethic is such that there will be substantial voluntary compliance once that bill is enacted and known, and that itself will be a tremendous help.

Obviously, there will be resource needs tied to employer sanctions to allow us to add additional people and resources to enforce that. So I think the law itself will be a big help. The existing resources we have can go a long way. The additional resources necessary will allow us to more effectively enforce that, together with the fact that, I like to think, in this administration we have done a more effective job with enforcement.

We have brought some fine new people in that have good enforcement backgrounds. I would also mention a point we discussed earlier on your concern on the Griffin Bell amendment, more effective working relationships with State and local governments at all levels, including law enforcement. We are moving forward on developing a mass immigration emergency contingency plan that has been in the works for a period of time, and it is now beginning to go out for comment, particularly in Florida, and we plan to expand that.

So I think we are making some effective steps. I will come back to our Project Jobs, which seems to draw a lot of either strong favorable or unfavorable comment. Selective enforcement has been effective, and we think that you have to use your resource effectively.

We have done a lot more in the major smuggling rings. As you know, there have been some very major apprehensions and convictions, and we think, again, that is utilizing the resources in a target.

So we think we are doing an effective job. It is a massive one. As the increased flow comes in, it makes it all the tougher. But we are out there, I think, doing a good job, and with the kind of legislation we hope will come out here, we will be able to do an even better one.

Senator GRASSLEY. Could you elaborate on why you feel the 70 immigration judges that are provided under S. 529, why that number is inadequate?

Commissioner NELSON. There are really two aspects, I think, Senator. First of all, I think it would be a mistake, as a general matter of statutory drafting, to put a fixed number in the bill, for at some point you might have to change and would need a statute to do it. So, it would be much better to use that as a normal authorization type thing rather than in the statute. So in principle we do not think it is good.

But with the increased number of asylum cases that I mentioned, it just seems that that number probably is not adequate. Maybe for starters, it would be fine to get those people out there. That is 20 more than we have now. But even with the numbers now, we could probably use more. But the major concern was not to lock it into the statute.

Senator GRASSLEY. How many additional positions and how that translates into additional dollars or appropriations, do you believe your agency needs to carry out the objectives of S. 529?

Commissioner NELSON. That is, of course, a very fair question, but a very difficult one to answer, and I would have to defer the specifics. We are currently working, internally within INS and then through the Justice Department, on some projected numbers for the enforcement positions for the legalization-related positions, and various support positions.

Of course, we have to go through the process within the administration, through the Justice Department, to OMB, and to the White House, so we cannot really be in a position of giving a specific figure now. No question that there will be additional resources necessary. The Attorney General has acknowledged that. And that we will be in a position to seek a supplemental to the 1983 budget, or an amendment to the 1984 budget, and we will just have to work with the committee and certainly within the administration to develop those specific figures. We really do not have them specifically at this point.

Senator GRASSLEY. Would you give us your latest information on the status of the data processing nonimmigrant visa control system?

Commissioner NELSON. Broadly, on the data processing, of course we are very pleased that the administration was very supportive, and we presume the Congress will be, that we have put into the fiscal 1984 budget some $20 million for enhanced particular hardware acquisition for the major data processing effort, and that will allow us to really get it operational.

In addition, we have $10 million in the 1984 budget for a national records center to consolidate all records in one location, and again, highly using the data processing. Having that money in the budget will enable us to move forward and get that implemented.

Senator GRASSLEY. It is not expanded to the fullest yet?

Commissioner NELSON. Oh, no. We have been developing this program, of course, for over the last few years, and it has been a very long, gradual process, with a lot of oversight and a lot of involvement, but we think it is moving along well. It is still a very massive undertaking.

I mentioned earlier the current projects we have now under way. The nonimmigrant information system, and the deportable alien control system, and the naturalization casework control system are actually under way. The nonimmigrant information system is operational now throughout our ports of entry for the collection of the information and the documents are processed in three major cities prior to input into the automated record.

Senator GRASSLEY. One of the things raised in the hearings of the last Congress was that we did not know when a person came into this country legally and when he left. Do we now know through the computer when a person comes into the country and when he departs?

Commissioner NELSON. Yes, we do under this new system I just described. The processing centers are in place in Miami, Los Angeles, New York, which are also the major ports of entry. A new form has been developed. When a person comes into the country, the form has a number on it. Part of that number, one-half of the form is turned in, the other half is stapled to the passport, and when that person leaves, no matter where they leave, they turn it back in.

Then, those numbers are matched. That will allow us to know—but it has been too early to tell on results—as to whether there are many that are overstaying, but having the system itself will be an immense improvement.

Ambassador ASENCIO. May I add, Senator, that this particular provision or system has particular pertinence to our nonimmigrant visa waiver section of the bill, where we, in response to the committee's insistence, made our system of waiver of nonimmigrant visas for those countries, that did not present much of a visa fraud or abuse problem, contingent upon the establishment of this system. So the two things are very, very closely linked.

Senator GRASSLEY. Thank you, Mr. Ambassador.

What is the situation in our asylum detention centers, all of them I suppose, but specifically Crome North and Fort Allen? How many people are being detained and for how long?

Commissioner NELSON. These, of course, are not asylum detention facilities. They are general detention facilities for immigration use across the board. Crome in Florida, is being used as it was initially intended, of course, as a turnaround center.

We have roughly 400 or so currently there from, I think, some 40 different countries. It is quite a cross section. A lot of those are being processed through the immigration courts, and in some cases deported, and other cases, of course, allowed to stay, depending on the results of their hearing.

Fort Allen currently is basically closed down because, partly under the agreement with the Commonwealth of Puerto Rico and with the release of the Haitians under Judge Spellman's order, that facility was no longer needed. So it is, you might say, in mothballs at the current time.

What we have done, and we are proud—I do not know if it has been generally announced, but the Attorney General just within the last week or two reached a general agreement—I do not think the papers have been signed but we reached a general agreement—with Oakdale, La., where we will be building a permanent alien detention center.

We have some features in this arrangement that are very important. The money was authorized in the current budget, so that money is available to build the facility, and the construction will start shortly. It will be a 1,000-bed, permanent facility. In addition, we have agreement from the State and local people that if needed, that we could add another 5,000 in a temporary detention situation. We would have the land, the fencing, and other equipment available to move quickly on that. It also, if needed, could be used for Bureau of Prisons' needs, so there would be a lot of flexibility there.

So we think that facility, which therefore could accommodate up to 6,000 additional aliens if there was another major influx, will give us a lot of capability. We also are moving forward in a couple of other locations to add to our available detention space.

Senator GRASSLEY. How is the interdiction program working?

Commissioner NELSON. It is working very well, Senator. It has continued to work very well.

Senator GRASSLEY. Is it still continuing?

Commissioner NELSON. It is. It is still continuing. It has been low key, and we think that has been good. But as you know, the number of Haitians coming into Florida, which was several thousand a month a year and a half or so, is down to almost nothing at the current time.

We think that is a combination of the continued effective interdiction program, the continuation of our firm detention policy, and more effective legal procedures that we are pursuing. So we have been very pleased with that program, and the Coast Guard has been extremely cooperative. We very much appreciate their continuing efforts.

Senator GRASSLEY. I would like to shift to employer sanctions and questions around what the Service is going to do to avoid discrimination in the enforcement of employer sanctions. You know what the claims are; that when your agents would enter the workplace, that Hispanics would often be questioned and checked, while Anglos are not subject to the same sort of scrutiny.

Commissioner NELSON. I commented, I think before you came in, during my prepared testimony on that, and the Attorney General also addressed it. In summary, we think that a lot of the claims of discrimination are not accurate, are used as more of a sword than as a shield in this issue. First of all, there is nothing in the provisions of the employer sanctions that would in any way countenance discrimination.

Existing laws, such as title VII of the Civil Rights Act, of course are alive and well, and can be utilized. We think the actual process under the bill, where all employees would have to show some identifier, could avoid some of the problems that people charge are actually causing discrimination.

Who knows now how many employers might decide not to hire a Hispanic because he might be illegal? Maybe there is no penalty to the employer, but it still is illegal for the person to be here, and the employer could be hassled, or think he would be hassled, or whatever.

So we are not sure that there are not cases of discrimination now, but under the law, as proposed, the checking of all employees would be a deterrent against the discrimination. Also it was pointed out by the Attorney General that the research done by the Civil Rights Division made it quite clear that no employer would have any defense to a claim of discrimination on the ground that he did not hire the person because he did not want to violate the employer sanctions law.

So there is no legal basis for that claim. I would again just conclude, there is far more discrimination currently against Hispanics and others, who are citizens or lawful permanent aliens, by reason of illegal aliens being hired knowingly by employers or, in some cases, unknowingly, and thus depriving them of their right to make a livelihood in this country.

We think that this is the real issue of discrimination, and this ought to be emphasized as we look at this issue, and not at this other, as I believe Chairman Rodino used the words in the Rules Committee last year, "a bit of a red herring" issue.

Senator GRASSLEY. I am going to call a 10-minute recess because Senator Simpson, who had to go to another meeting, wants to ask some further questions. I have no further questions.

We will stand in recess for approximately 10 minutes.

[Short recess taken.]

Senator SIMPSON. Thank you for your patience and understanding. I thank you, Chuck. I really appreciate your taking that over for me.

I have a statement of Senator Grassley which will be entered into the record as if read in full.

[The prepared statement of Senator Grassley follows:]

PREPARED STATEMENT OF SENATOR CHARLES E. GRASSLEY

Mr. Chairman, I'd like to begin by complimenting you on taking such rapid decisive action regarding the reintroduction of the Immigration Reform and Control

Act. I share your hope that we can move through these hearings and committee and full Senate deliberations as soon as possible. I think we can agree that the ballgame is not really in the Senate but lies in the House. Completing action on our side at the earliest possible date is crucial to obtaining a public law by the end of this Congress.

Immigration reform is something this country has been awaiting for many years. The Senate acted accordingly by an overwhelming majority last year and save for the obstructionist tactics on behalf of a few members of the House the will of our citizenry would now be expressed in permanent law.

I think the need for this legislation has been demonstrated over and over again not only by the report of the Select Commission and the record we established through last year's hearings, but by action taken almost ten years ago by Chairman Rodino in sending House passed immigration reform legislation over here to the Senate. Unfortunately, that legislation died. I hope we won't be saying the same thing two years from now about the bill we have before us today.

The effects illegal immigration can have on a society taken to extreme are evidenced by the recent violence in India. I am not suggesting that a situation of that magnitude presently exists in the United States. However, I am saying that our country may be following a path that could lead to similar results. If we continue to ignore this potentially explosive situation who knows what can happen in this country!

Our present immigration policy has led to the loss of control over our borders. We provide welfare benefits and education to illegal aliens and continue to contribute to our burgeoning unemployment rate by encouraging illegal immigration. However these results may be the least of our problems. Constant racial and religious confrontations fueled by increasing waves of illegal immigration can lead to the erosion of our democratic values. The eruption of violence as a result of these ethnic tensions is not an unrealistic possibility—indeed it is a common occurrence. If this situation continues as is, we will not be able to shirk the responsibility that eventually we have become the tools of the destruction of a society we hold so dear.

Senator SIMPSON. We did have this conflict with the Environment Public Works Committee, had to get the NRC budget approved; rather an interesting and necessary item.

So I think that I just wanted to—I believe all of the questions were asked of Al Nelson, the remaining questions. Were some questions asked of Diego? OK.

I have some questions to ask of Diego Asencio. You have indicated that you support a broad legalization program, but I know that you and I both discussed in the past the issue of that overall cap on legal immigration.

We, of course, do not know how many illegal aliens are residing in the United States, but 5 years ago we had the figure of 3.5 to 6 million persons. I think all of us could agree that it is very likely more. If even 25 percent of that illegal community were to come forward, become legalized, and then eligible for citizenship under the present provisions, within 5 or 8 years, and there is no overall cap in place, what level of immigration resulting from family reunification should we expect within the next 8 to 10 years?

Ambassador ASENCIO. May I consult with my expert?

Senator SIMPSON. I would appreciate that.

Ambassador ASENCIO. Mr. Chairman, we have a chart that I would be happy to make available to the committee, and it is my understanding that by 1989, in the family reunification categories not subject to numerical limitation, with legalization you would have something akin to 242,650 versus what would have been 228,650. So that would be essentially a difference of some 14,000. Of course, it would continue to grow in subsequent years.

Senator SIMPSON. We will look at the chart, and then hire our own demographers there—no, I did not mean it.

Ambassador ASENCIO. My demographers are under strict instructions not to exaggerate, of course.

Senator SIMPSON. What? You may retain Miss Harper there at the table, if you wish, because I want to ask some other questions that have to do with numbers.

You state clearly that legal immigration is not such an immediate problem as illegal immigration, and conclude then that legal immigration should not be changed at this time. You and I have discussed that before, publicly and privately.

So what is the present current backlog of persons eligible for immigration under the existing system, who are waiting for their number to come?

Ambassador ASENCIO. We estimate about a million.

Senator SIMPSON. About a million, two. And how many are in the fifth preference?

Ambassador ASENCIO. About three-quarters of a million.

Senator SIMPSON. That is what we perceive.

Would you describe to the subcommittee something that has been visible to you on many occasions, and what we know from the consular offices in Mexico, about what occurs when a person in the United States must wait 9 to 10 years or more to bring in immediate family?

Ambassador ASENCIO. Well, of course, this, in effect, is a means of fomenting illegal immigration and, of course, it is disruptive of the existence of the family. There is no question about that.

Senator SIMPSON. And, indeed, it stimulates illegal immigration, and if I am not mistaken, more than 80 percent of the persons come back to Mexico to pick up their visas when their number finally does come up.

Ambassador ASENCIO. That is correct.

Senator SIMPSON. In other words, when their number comes up on legal immigration, they come down from the United States to pick up their number, 80 percent of them?

Ambassador ASENCIO. That is correct.

Senator SIMPSON. So, therefore, we could say, could we not, that these huge backlogs, such as we have under the existing system, are a direct factor in illegal immigration?

Ambassador ASENCIO. I think there is a leap from the universal to the particular there. There are other factors that contribute to illegal immigration also, substantially.

Senator SIMPSON. Oh, yes.

Ambassador ASENCIO. There is no question that there are both push and pull factors, as we know. I would say the principal factor giving impetus to illegal immigration, of course, is the magnet that we are economically for those who want to better their economic and social status.

But there is no question that backlogs of that type have to contribute to the overall problem.

Senator SIMPSON. I believe that.

Of the fifth preference, some 750,000 persons, 700,000 or 750,000, how many of those are actual brothers and sisters, and how many are derivatives of the spouses and children of the siblings, and not direct family members of a U.S. citizen?

Miss HARPER. It is our understanding, Senator, that about 25 percent of the sibling category are unmarried, so 75 percent consist of siblings plus family. If you assume a ratio of 3 to 1, which is sometimes used, one-fourth of 75 percent is around 20 something percent, so about 45 percent would be brothers or sisters, and 50, 55 percent would be family members.

Senator SIMPSON. What is the average number of petitions deriving from a single fifth preference petition after the spouse of the fifth prefernece sibling has naturalized and then petitioned for all of his or her relatives? Do you have that figure?

Ambassador ASENCIO. It varies from country to country. My recollection was that for Mexico, it ran at an average of four.

Senator SIMPSON. The figure from the Select Commission is one that should focus our attention on when we are talking about legal immigration—said the average number of derivatives was 64.

Ambassador ASENCIO. My recollection is that that was predicated on one particular horror story regarding an Indian immigrant. What I am saying is that the number would vary depending on the country. I have a distinct recollection that we have empirical data that, for Mexicans, it averages out to four.

Senator SIMPSON. Well, if we were all deprived of our horror stories in this arena, the Government should shut down.

Ambassador ASENCIO. Yes.

Senator SIMPSON. So that is mine.

Now, we have a total backlog of a million and a quarter, growing, and leading to continuing illegal immigration, the backlog dominated by the relatives of siblings, of adult U.S. citizens, which I think all might realize as being a rather remote family reunification tie to some cultures.

And one can conclude that our legal immigration system is not satisfactory, that we would certainly be likely to be overwhelmed as the result of a broad legalization program, or that that could happen, and that we should then deal with legal immigration as an integral part of an immigration reform package.

That is how it came up in the first place.

Ambassador ASENCIO. I understand. My point is that there obviously are interrelated aspects of legal and illegal immigration, as one can also make that argument for refugees and other entrants.

What I am saying is that essentially, it would seem to me that everything I have seen with regard to the Select Commission stuff, what we discussed in the Attorney General's task force and what I have seen in this legislation, would indicate in fact that one would be substituting for an essentially arbitrary system.

There is no question that what we have now is an essentially arbitrary system, but that what would be imposed by the legislation would also be an essentially arbitrary system that would not in fact bring any substantial benefits to those backlogs; in fact, with the cap, would probably exacerbate them.

Senator SIMPSON. Your testimony, differing really as it does from past testimony, because you really come down hard now on legal immigration—I do not know quite what the reason for that is, but I am sure we can develop that over a cup of coffee someday. But it is different and it is curious to me.

Ambassador **Asencio**. I thought the Attorney General had sweetened it considerably.

Senator **Simpson**. No; but I am waiting for you to sweeten it, not him.

But here much of your testimony refers to the fact that other countries, particularly the major sending countries, may not react favorably to the United States revising its own immigration system. That, in itself, is an extraordinary statement, because if we do not revise our own laws, under the needs of our own legislators in our own country, who is this outside influence that advises us how to control our borders and how to take care of the 230 million that are already here? A rather interesting proposal.

So we look continually at this reaction, and this is why, in some cases, the State Department, either fairly or unfairly, is perceived as being unable really to add much to the dimension of the debate because of the tenuous nature of the way in which it functions—and this is not meant to be nasty.

We sit here and say we cannot revise our own legal immigration system, or correct illegal immigration and that the status quo should be maintained in legal immigration. You mentioned that legalization is a good idea because it would diminish the concerns expressed by Mexico and other countries, and that in opposing the overall cap, the State Department must also bear in mind prospective adverse reactions by some foreign governments which will view this as discriminatory against their nationals; that the deletion of siblings ignores the cultural traditions of many American citizens of diverse origins, and that the governments of their relatives will probably not hesitate long to express their views to us.

Then, we go on to the provision that user fees on land borders would certainly appear to Canada and Mexico as inconsistent with the spirit of cross-border cooperation.

Ambassador **Asencio**. Actually, I have a better argument on that one than that.

Senator **Simpson**. Do you?

Ambassador **Asencio**. Oh, absolutely. I have been doing a little figuring on the margin here while listening to Al Nelson. I had gotten some figures to the effect that—from INS, as a matter of fact—that San Ysidro has about 100,000 people crossing a day. And of those, 60,000 are aliens.

I figured that if to collect the tolls, you took, say, a half-minute per alien, you would come up with about 30,000 minutes, which is about 500 hours. And I am not sure yet—I am still figuring—how long the traffic jam would be.

But I think essentially the idea of either having to withstand traffic jams or open up new border checkpoints would dissipate any revenue that would be forthcoming.

I must say that I have come at this, not only from this point of view, but, for instance, at one point we were considering the possibility of a machine-readable card of some sort. And just the action of dunking the card into the reader raised the prospect of such horrendous tieups that we abandoned the idea.

But with regard to the general approach, I understand, Mr. Chairman, your point on all these things. Of course, we feel at the

Department that we have an obligation to point out the foreign impacts of these things.

This, after all, is the business we are in. I do not think it is a question of anybody telling us how we should control our immigration. In fact, most societies have gone out of their way specifically not to do that.

But we can see clearly that there would be repercussions in a number of societies as a result of what we have in mind.

Senator SIMPSON. I hear that clearly, and you and I both know that the essence of the legislation, the very touchtone of it is to correct the problems with illegal immigration. That is assuredly so.

But in our previous review of all of your remarks and the remarks of the State Department in the past, there has never been such an interesting array of negatives as presented in your testimony,and continually raising of the specter of foreign governments is confusing, blurring the purpose of what we are doing. As I say, in drafting these changes to the legal immigration system, we have tried to maintain uppermost in our minds those changes which would serve the best interests of the American people—nothing more mysterious than that—in regulating the flow of aliens across the borders of a sovereign nation.

How do we best do that, how do we do that for the people that are already here, without addressing issues, or talking about xenophobia, and all the rest of the stuff? Certainly, that is considered in the context of our foreign policy, but options for any kind of reform that we will ever do, or have ever done, as to what permanently serves the best interests of this Nation is what we would expect other nations to do in their own sovereign capacity.

Were the representatives of the Department of State contacted recently by the Federal Republic with regard to tightening employer sanctions? Did France contact you when they decided to make employer sanctions meaningful? Has Canada told you what they are up to with regard to tightening their activities, or Australia?

I think it is obvious, is it not, to everyone extant that it is quite clear that any immigration reform in this country, which will increase control over admissions to the United States will be reviewed negatively by every single major sending country? I think we could put a big period right behind that, and just forget all the other applesauce that goes with it.

Ambassador ASENCIO. Mr. Chairman, I have the distinct recollection that my testimony today does not materially differ from what I have said in the past.

Senator SIMPSON. Well, I would say that it does. That is why I asked those questions. But I just do not believe—and yet we must weigh it—but I would not put the preponderance of the evidence upon the issue, as you do, as to our immigration laws being designed to achieve the goals of the sending countries, or to recognize them——

Ambassador ASENCIO. I could not agree with you more, Mr. Chairman.

Senator SIMPSON [continuing]. In a way which is overweighted.

Ambassador ASENCIO. I would say my preponderant argument in that regard is a principle I learned in the great State of New Jersey as a youngster. That is, "if it ain't broke, don't fix it."

I happen to think, the Department thinks, that the current system, with all its problems and difficulties, has functioned reasonably well.

Senator SIMPSON. I do not see how that can be possible when you have 1.2 million people in the backlog. How can it be said that it functions well? I have the impression that the preference system as it is, complex as it is, is something that is just locked into the system in its own ponderous form and that very likely, you know, no changes would be made there. That is a nagging feeling that there might not be any that would be desirable, with regard to the preference system. Maybe you can share with me at future times what specifically you are recommending and the changes in the preference system, if we do not tamper with the legal system, that will avoid what we have right now with a fifth preference that does not work—not with 750,000 in the backlog—with regard to other backlogs of 9 and 10 years.

So if it ain't broke, don't fix it, but it is broke, so we had better fix it.

Ambassador ASENCIO. I would think, Mr. Chairman, with the world demand being what it is, people wanting to come here, I cannot conceive of any system that obviously applies some kind of limitation that would not lead to backlogs. I assume that you are not arguing for an open ended immigration system.

Any system that the mind of man can come up with would invariably result in backlogs, and substantial ones.

Senator SIMPSON. I think that is important that the people be aware of that. Indeed, it will always be there, period, but to what degree is the difference.

Well, there is one other question, and then I will submit some of these in writing just because of the time.

The push factors that we are going to have to anticipate in coming decades in Mexico, which seem to be one, and only one, of the reasons why illegal immigration is occurring, and again knowing that only 45 to 50 percent of the illegal undocumented flow is from our southern neighbor, what is your prognosis of the effect on our relations with Mexico if no immigration reforms whatsoever are enacted?

Ambassador ASENCIO. Well, I can anticipate. I have a doomsday scenario that is sort of predicated on that thesis. What I am terribly concerned about, if we do not have legislation in this particular session, is that whatever impulse or impetus exists for the passage of this legislation will be disregarded, say, when public perceptions of an economic upturn are prevalent, and that with the demographers saying that there are going to be labor shortfalls sometime within the next decade, that the number of illegal aliens will continue to increase.

As you know, Mr. Chairman, one of my big concerns with regard to this particular group is that being illegals, they are exploitable, subject to exploitation, and, in fact, are exploited, and constitute a political subgroup that I do not believe we can accept either from a humanitarian standpoint or from the standpoint of the health and condition of the Republic.

If that group continues to increase—which is the only conclusion one can come to—in substantial numbers, that at some point it will be a focal point of tension between the two nations.

Senator SIMPSON. Indeed it will. Indeed it will.

You expressed concern about the Helsinki accords. I was interested in that, too. Here we have a bill which gives 81 percent of all visas to family reunification immigrants and that that somehow will put us in an awkward position with respect to the Helsinki accords.

I must say that that one has a different ring. How in the world could this country be in an awkward position when we provide more than four-fifths of our visas for family reunification, and accept more immigrants for family reunification than the rest of the world combined? Which country would cast the boulder at our head on that particular issue? Would you share that with me?

Ambassador ASENCIO. I think we were speaking in terms of relative degree of magnitude and what the impact would be on the press, and the fact that it could be exploited. Obviously, our track record in this regard is a heck of a lot better than anybody I can think of.

Senator SIMPSON. Indeed it is.

Ambassador ASENCIO. But there is no question in my mind that that has not stopped them from throwing boulders at us in the past, and I do not think it will on this particular occasion either.

Senator SIMPSON. I will just be interested to see who the boulder throwers are on that one. I cannot wait, because I think we all join in the puzzlement on that.

Anyway, those are some things I wanted to share with you. As I look at your testimony, and it does get technical, the preference system is complex, and yet we tried to adjust the second preference here. We whooped that up from 26 percent to 65 percent here for immediate family of permanent residents.

You state that that would not meet the potential demand. That is puzzling, because opportunities for immigration by family members of resident aliens decrease under the numerical limits. There would be a natural, as you say, but in our view, improper incentive to naturalization solely to confer immigration benefits on relatives. A puzzling statement.

Ambassador ASENCIO. I think what I meant there was I would prefer for them to seek naturalization because they wanted to become American citizens, not because they wanted to import their relatives.

Senator SIMPSON. Yes, I could see that, but there is no evidence—here we have a waiting period for bringing spouses from Mexico of 9 years, spouses and children, and yet the naturalization rates of Mexican immigrants is among the lowest in the world. Six to 12 percent are naturalizing. Therefore, there is apparently no big push to naturalize simply to bring in those relatives with no delay, but we know that is perhaps a different situation, and could be explained in a different context.

But anyway, I just decided I would toss some of those things out so we do not forget some of them in the process

Ambassador ASENCIO. I agree that particularly among Hispanics, the naturalization rate is unusually low. There are any number of cultural and social factors that determine that. I think that is unfortunate, and I think that an educational process is in order in order to change those statistics around.

I naturally favor more Hispanics becoming American citizens. But having said that, I would regret a situation where those statistics may change merely because it conferred a specific benefit on the individuals, and not out of any sense of conviction or as part of an educational process.

Senator SIMPSON. Well, I thank you. I have some other questions which I will submit. I look forward, as we get into this year, when we return to Mexico. I certainly hope you will be very much present as we visit with the new leaders of Mexico to share these things——

Ambassador ASENCIO. I am looking forward to that, Mr. Chairman.

Senator SIMPSON. To both of you who continue to strive mightily in the process, I greatly appreciate your being here once again, and thanks very much.

Ambassador ASENCIO. Thank you, Mr. Chairman.

Commissioner NELSON. Thank you.

Senator SIMPSON. I think that will conclude the hearing. I thank you.

[Whereupon, at 12:23 p.m., the subcommittee adjourned at the call of the Chair.]

[The charts previously referred to and additional material subsequently submitted by Ambassador Asencio follow:]

Notes to Graph on Projected Visa Issuance in the Independent Immigrant Categories

——— Graph shows special immigrants (exclusive of returning residents). The figures for 1972-1982 are rounded. The estimates for FY'84 and subsequent years include a figure of 2400 G-4 special immigrants annually. Issuances under the visa categories established by the Panama Canal Act are expected to be few in 1984 and later years.

—○— For FY'82 -'84, figures below line shows total third/sixth preference limitation under Section 203(a) of the INA. After FY'84, this line shows independent categories (present third/sixth/nonpreference) if the terms of Section 203(a) remain unchanged.

—×— For years from FY'85, estimated issuances in the numerically limited independent preferences are noted.

Comments on Visa Availability in the Independent Immigrant Categories under The Proposed Senate Bill

Availability here will depend to a great extent on the requirements for labor certification approval.

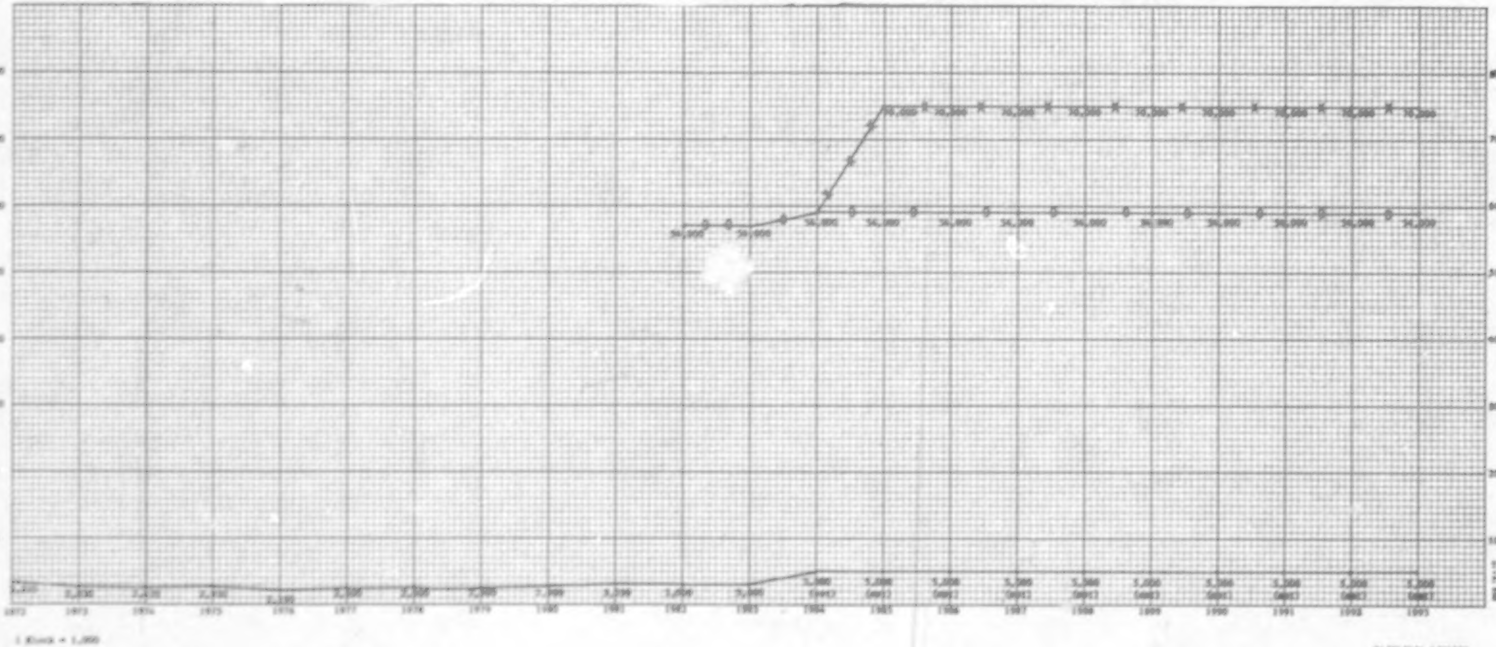
Even with stricter certification requirements, the increased visa limitations for independents may encourage employers in need of qualified workers to recruit abroad, thus adding to demand.

A basic underlying assumption is a strong US economy which can offer places to foreign workers.

In FY'85, visas should be available in all independent categories, including nonpreference which is likely to have a cut-off date in the mid or late 1970s.

By FY'86, vigorous recruitment abroad may result in sufficiently heavy demand to oversubscribe the investor category and make nonpreference unavailable.

Projected Visa Issuances in Independent Categories



Visa Availability in Family Reunification Categories under Proposed Senate Bill

Year	Estimated issuances in family reunification categories not subject to annual numerical limitation (IR's etc.)	Annual limitations for preference categories	Estimated use of visa numbers by preference class: 1st	2nd	3rd	4th
82	162,500	216,000	6,713	117,487	20,613	71,187
83	170,625	216,000	6,700	117,500	20,600	71,200
84	179,156	216,000	6,700	117,500	16,000	75,800
85	188,113	170,844	6,900	108,500	15,085	40,359
86	197,518	161,887	7,100	122,409	15,500	16,878
87	207,393	152,482	7,300	114,685	15,249	15,249
88	217,762	142,607	7,500	106,585	14,261	14,261
89	228,650 With Legalization 242,650	132,238 (With Legalization 132,238)	7,700	98,089	13,224	13,224
90	240,082 With Legalization 268,082	121,350 (With Legalization 107,350)	7,900	89,180	12,135	12,135
91	252,086 With Legalization 292,086	109,918 (With Legalization 81,918)	8,100	79,834	10,992	10,992
92	264,690 With Legalization 315,690	97,914 (With Legalization 57,914)	8,300	70,032	9,791	9,791
93	277,924 With Legalization 336,324	85,310 (With Legalization 34,310)	8,500	59,748	8,531	8,531

Notes

First preference is expected to be current through FY-95, although a legalization program could add significantly to demand by the 1990s.

Second preference* is likely to be current during FY-85, but become oversubscribed by FY-86 (as Mexico use rises through fall across of unused Canada numbers).

Third (present fourth) preference is likely to become oversubscribed by FY-87 and remain so thereafter.

Fourth (present fifth) preference will be oversubscribed for all years with a likely retrogression of the worldwide cut-off date by FY-85 as the effects of the reduced limitation are felt.

In FY-85 the 4.65 to 1 ratio is likely to apply only to the Philippines and Hong Kong chargeabilities.

Estimated country relative pref. issuances:

Year	Mexico	Philippines
1984	20,000	20,000
1985	24,720	9,564
1986	51,956	8,397
1987	50,104	7,171

Third and fourth preferences will be unavailable for Mexico, Philippines and Hong Kong because of their heavy first and second preference demand.

*except Mexico, Philippines and HK

(Reduced limitations resulting from increased IR's etc. following legalization would oversubscribe first preference by FY-93.)

CA/VO/F/I 3/25/83

Notes to Graph

Categories not subject to annual limitation, i.e., immediate relatives etc:

——— Figures 1983 - 1993, are estimates based on an annual increase of 5% over each previous year's total. Average percent increase 1972 - 1982 was 6.24, but between 1979 - 1982 about 4.85%. We have used a 5% estimate post-1982, which we believe is a minimum likely rate (and possibly conservative). The incentive to naturalization from the decreasing availability of visas in the preference categories can only be guessed and could well help generate an even greater year to year increase in IR visa demand.

- - - - Broken line indicates impact of legalization on issuances in these categories.

Family reunification preference categories (subject to annual numerical limitation) under present terms of section 203(a) of the INA:

—O— For FY'82, '83 and '84 figure below line shows total first, second, fourth and fifth preference limitation under section 203(a) of the INA. After FY'84, this line shows family reunification pref. categories total if the present terms of section 203(a) remain unchanged.

- O - Broken line with "O" takes into account impact of proposed legalization.

Family reunification preference categories (subject to annual numerical limitation) under terms of proposed Senate legislation:

—X— Figure under this line shows yearly family reunification preference limitation.

- X - Broken line with "X" takes into account impact of increased IRs etc. following proposed legalization. Figure above line shows yearly preference limitation in this circumstance.

Basis for Estimates Of Impact Of Proposed Legalization On Immediate Relatives Issuances:

Estimates prepared for Select Commission use indicated:

813,600 potential beneficiaries of legalization to permanent resident (i.e. entered prior to January 1, 1977).

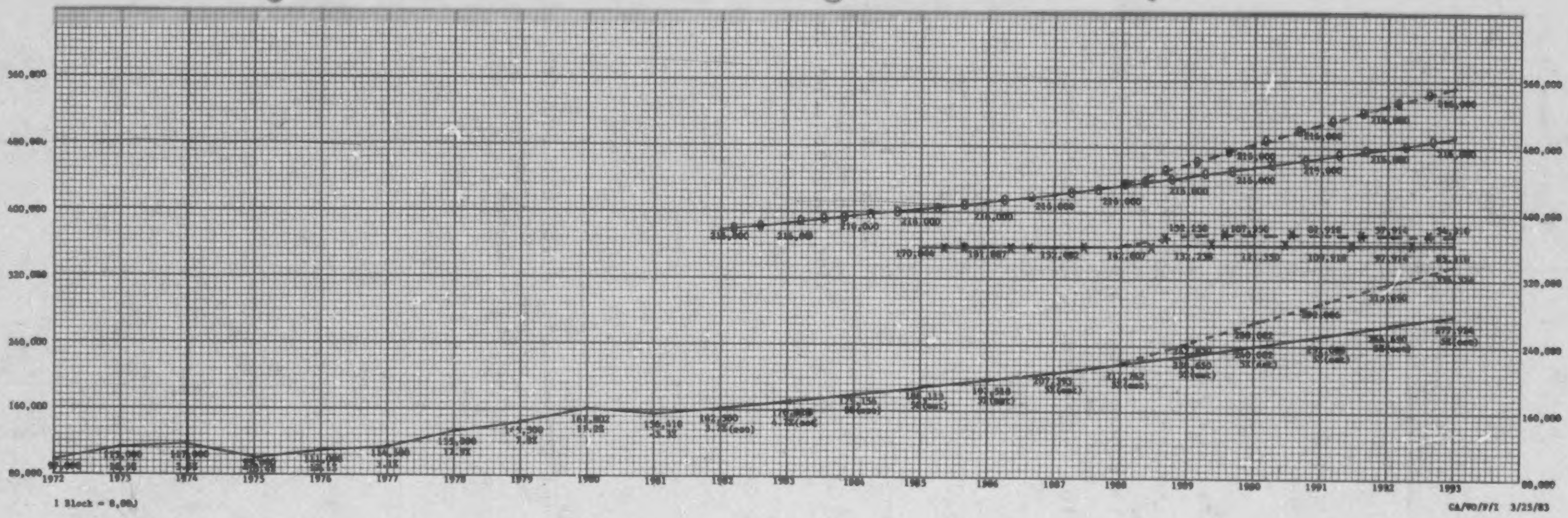
1,627,200 potentially entitled to adjustment to temporary resident (i.e. entered between January 1, 1977 and December 31, 1979), with subsequent eligibility for permanent resident status.

Assumptions:

- Applications for legalization total the figures provided above.
- The legalization is enacted during FY 1983 and INS grants permanent residence to 406,800 beneficiaries during FY'84 and an equal number during FY'85; 500,000 in FY'86; 800,000 in FY'87; and 325,000 in FY'88.
- The beneficiaries are not likely to begin becoming eligible for naturalization in significant numbers until FY'89 at the earliest.
- The increase in naturalization applications will not result in extended processing delays by INS.
- The vast majority of married beneficiaries are accompanied by their spouses (who are likely to benefit from legalization also).
- Fifty percent of legalization beneficiaries will be naturalized within three years of eligibility.
- Twenty percent of those naturalized will file one immediate relative petition by FY'95: This is a very low estimate, but it assumes that most close relatives who wish to reside in the U.S. will have entered already (and may themselves have been legalization beneficiaries.)

FY	EST. ADDITIONAL NATURALIZATIONS DUE TO LEGALIZATION	EST. ADDITIONAL IR PETITIONS
89	70,000	14,000
90	140,000	28,000
91	200,000	40,000
92	255,000	51,000
93	292,000	58,400

Projected Visa Issuances in Family Reunification Categories



United States Department of State

Washington, D.C. 20520

March 31, 1983

Dear Mr. Chairman:

Following the February 28 testimony of Assistant Secretary Asencio on S. 529, the Immigration Reform and Control Act, the Subcommittee staff submitted additional written questions to be answered for the record. Please find enclosed the responses to those questions.

With cordial regards,

Sincerely,

Alvin Paul Drischler
Acting Assistant Secretary
for Congressional Relations

Enclosure: As stated.

The Honorable
Alan K. Simpson, Chairman,
Subcommittee on Immigration and Refugee Policy,
Committee on the Judiciary,
United States Senate.

Q. You have indicated in your testimony that there is no need for a cap on legal immigration. In addition, you have supplied us with information that projects legal immigration (given the legalization program under S.529) to the United States to reach approximately 544,000 by 1990, and approximately 612,000 by 1993. What assumptions underlie these projections, such as number of aliens legalized, average number of family petitioners per alien, etc.? Is this rate of growth in legal immigration in the best interest of the U.S. population? If not, what do you feel is an ideal level of legal immigration through 1993?

A. Our testimony stated our "substantial reservations about the wisdom and practicality of an overall cap" and our "view that legal immigration is not such an immediate problem as illegal migration." (Emphasis supplied.) The context was the current level of legal migration, which does not appear to us to be exorbitant for a country of our size. Moreover, it projected legal migration in a setting of significantly reduced illegal migration, as intended by this bill. We are not, of course, in a position to state whether any given growth rate is in the best interest of the country. We note that the House Select Committee on Population, among others, was unable to reach a decision on the optimum population for the U.S. against which we could apply demographic projections of ultimate results from immigration of any specific level.

Our response on the assumptions underlying our projections will be forwarded separately.

Q. The figrures you gave us on projected growth rates in the Immediate Relatives category used a 5% estimated increase from 1984 through 1993. You state that 5% "is a minimum likely rate (and possibly conservative)." Could you please supply us with a maximum likely rate through 1993, and a rate you see as a likely average increase.

A. The average annual increase in admissions of Immediate Relatives (IR's) etc. -- i.e., adjustments under section 214(d) and admissions in other non-limited family unification categories -- for the period 1972-1982 was about 6.24% but for the past four years (1979-1982) the average has dropped to about 4.85%. It should also be noted that IR etc. immigration has not always increased; occasionally there has been a drop compared with the year before (cf. FY 1981, when a decrease of 3.3% from 1980 was recorded).

It is very difficult to predict future demand for visas since so many variables (from international political relationships and worldwide economic factors to INS processing time for petitions) can influence the rate at which immigrant applicants come forward. We considered using a 6.24 rate (similar to the increase over the period 1972-1982) as a possible maximum alternative basis for calculating issuances. At this annual rate, FY 1993 IR's etc. -- excluding the impact of legalization -- would total 316,568; with the legalization factor added, the figure would be 374,968.

However, we wished to avoid exaggerated growth figures in our calculations. Inasmuch as the average percent of increase over the past four years has been 4.85%, we believed that a 5% anticipated growth rate through 1993 is reasonable. We have preferred to base our calculations solely on that rate rather than to propose any alternative figure which would be less supportable by recent evidence and thus more speculative.

Q. I would appreciate your views on the push factors which we may expect in the coming decades in Mexico which make control of illegal immigration so necessary.

What is you prognosis of the effect of our relations with Mexico if immigration reforms are not enacted?

A. The general difficulties experienced by the Mexican economy, the relatively low level of Mexican rural socioeconomic development, rapid population growth and increasing unemployment, and the disparity in wage levels for laborers in Mexico compared to tht U.S., will continue to be the significant push factors for Mexican illegal immigration for the foreseeable future.

Since migration to the United States alleviates Mexico's unemployment problem and provides additional foreign exchange, Mexico can be expected to regard the possibility of tighter U.S. controls on illegal immigration as a development which complicates its economic recovery efforts. The Mexicans would thus prefer that stricter U.S. immigration controls not be enacted. If this proved to be the case, there would be little or no negative impact on our relations over the short term.

The problem is that, in the absence of reform now, the flow of illegal immigration into the U.S. is likely to continue, and even increase, leading to U.S. domestic pressures for more drastic action than is now contemplated. This in turn would have a major negative impact on bilateral relations.

Q. Some persons have advocated delaying immigration reform until the economic situation in Mexico improves. What is your view? What effect, if any, will passage of this bill have on our relations with Mexico?

A. Although President de la Madrid has taken action to restore the Mexican economy and to reduce Mexico's large international debt, the factors which inspire illegal immigration are endemic to the Mexican economy and are not likely to be resolved at any time in the foreseeable future. Delaying immigration reform until the Mexican economy improves would therefore not solve the problem and, as indicated in the foregoing answer, might lead to worse problems. Although it is unlikely that the Mexicans would be pleased at the passage of the immigration reform bill, we doubt that its passage would materially affect Mexican attitudes towards the resolution of problems in other areas of our relations, such as trade or foreign policy.

Q. Do you agree that enactment of the legalization provisions will likely place substantially increased pressure on the second preference (spouses and unmarried sons and daughters of permanent resident aliens)? Won't we have a large and growing backlog in this preference without the increased visas made available for that category under this legislation?

A. It is highly likely that there would be substantial increases in demand for second preference visas (as currently defined in your question) resulting from the proposed legalization program. The extent is unknowable, given disputed variables such as "how many family members are also here illegally", the ratio of single "illegals" to marrieds, etc. That the impact on the second preference would be substantial is, however, probably indisputable.

The "large and growing backlog", on the other hand, would be worse under the terms of S.529. As our testimony notes, the increased percentage allotted this category will be applied to a steadily diminishing total. The allocation will therefore steadily diminish.

Assuming enactment to be sometime in 1983, the petitions of the "legalized" would be filed in calendar 1984 and most beneficiaries would enter our data base in calendar 1985 (FY-86), allowing for INS processing time. We would anticipate increased Mexican usage of second preference in that year due to the "fall across" of numbers from Canada. We therefore also expect a worldwide oversubscription of that classification, and certainly an oversubscription in the countries of most of the prospective applicants resulting from the legalization program, adding immediately to the backlogs therein. Our projections of available visa numbers reflect this increase in usage in FY-86, but all following years show a lesser amount of numbers available to this class of applicants (i.e., below current levels and dropping further each year). Thus, even though the definition of the class is narrowed in this proposed legislation, there will not be increased numbers except in FY-1986 for this category, and the increased demands resulting from the legalization program will generate greater backlogs than would occur under current law.

Q. We understand the "Immediate Relatives" of U.S. citizens' category which is exempt from numerical limitations has doubled in the past 10 years (77,000 in 1973 to about 155,000 now). It is now over 150,000 persons annually. Is there any reason to believe it will not double again within the next 10 years to over 300,000 persons? Do you believe the legalization provisions, if enacted, will add to the increase in this category as legalized permanent residents become eligible for naturalization after five years?

A. In FY 1973, there were about 113,000 admissions to the U.S. in the Immediate Relative etc. immigrant classifications (i.e., including persons provided records of permanent residence under section 214(d) and other family unification categories not subject to numerical limitation). In FY 1971 these categories amounted to about 86,000, and for FY 1983 they are expected to total about 170,600, almost double the 1971 figure.

Based on an overall anticipated average growth of 5% in these categories, a rate consistent with that of the past few years, we have projected a 63% increase between 1983 and 1993, when a total of 277,924 is foreseen. This figure does not, however, include any increase resulting from the proposed legalization, which would indeed have a substantial impact.

Factoring in the enactment of the legalization provisions, an estimated 58,400 additional immigrations would be added to the FY 1993 figure estimated above, for a total in the Immediate Relative etc. categories of 336,324. This is almost double the expected FY 1983 figure.

Q. You indicate in your testimony that the collection of visa fees at the border would cause "unthinkable delays." But many bridges and highways in America collect fees, and almost every foreign country collects exit fees at the airports. Why should this provision be so difficult to implement?

A. As we noted in our testimony, a simple unmanned, automatic-arm "throw a quarter in the toll-basket" operation -- common on many of our bridges and highways -- would not suffice for implementing the proposal in S.529 because that would account only for the vehicle and not for the number of passengers or their nationality. Even many of our manned toll booths also have the automatic mechanism so that not every car (or person) needs the time and attention of the attendant. A system such as envisaged in S.529 -- which would apply the fee to each individual alien -- would require the attendant to calculate the total fee (or collect individually from each alien passenger -- perhaps making change each time rather than once per car) and would add significantly to the time taken to clear the vehicle.

Moreover, traffic flows on our highways are generally spaced throughout the travelling day. At the borders, most of the crossings are occur in a relatively short 2-3 hour periods, so that the effect of the "stoppage factor" would be aggravated. For example, approximately 60,000 aliens a day cross at San Ysidro, the overwhelming majority between 6 - 8:30 a.m. Most are "regulars" and screening is now minimal -- a quick glance at the border-crossing or alien registration card. If even a few seconds, say 15 - 30, were added for collection of fees from each, the inspection process would be lengthened by from 15,000 to 30,000 minutes (or 250 to 500 hours). Assuming no delays for change-making, we could perhaps drop that rate to 15 - 30 second per vehicle (about 30,000), which would still add 7500 to 15,000 minutes (or 125 to 250 hours). The length of lines this would create would indeed be "unthinkable."

Q. With the commitment this Administration has for recovering fees for benefits conferred, what leads you to the conclusion that establishing a user fee at border ports of entry would be "essentially impractical and unfair?"

A. Our judgment of its impracticality is addressed in the answer to 7(A).

As to fairness, S.529 proposed that aliens should bear the total burden of financing the border ports, which are also used to a significant degree by American citizens. It is arguable that the purpose of the ports is law-enforcement, not "benefit conferral", but, if their purpose is the latter, equity would suggest that all who benefit, not just aliens, should be charged the "user fee."

Q. One has the impression sometimes that the State Department believes the preference system in its present form should not be altered regardless of obvious problems which exist. Are there any changes in the existing preference system that you deem desirable.

A. Any preference system is likely to have problems, quite probably much the same as those of the present system -- i.e., backlogs in certain classifications. Backlogs are inherent in any system that sets overall limits below expectable demands which, given current and foreseeable demands, our system must do. Backlogs are unfortunate, but there is no acceptable solution to the fact that more people want to come to the United States than the U.S. believes it can absorb in a given year.

On the other hand, the Department is not necessarily wedded to the current system. We did not oppose making fifth preference available only to siblings of adult U.S. citizens some years ago and we have been known to advocate the limitation of fifth preference to unmarried siblings. We would favor a provision for investors and retirees, neither of whom are threats to our labor market and the former category is, indeed, likely to create job opportunities. We recognize, however, that many American citizens from countries discriminated against prior to 1965 believe that they have not had the opportunity for family migration that was available to others historically and that changing the ground rules radically would be detrimental only to them.

Q. Please provide data on the immigration backlogs for other developed countries, such as Canada, Australia, France, West Germany, Great Britain and Switzerland.

A. Except for Switzerland, none of the countries indicated has a numerical limitation on immigration. Absent such limitation, it is impossible to have "backlogs." The Swiss system is very complex and will be the subject of a further communication.

Q. As I indicated to Attorney General William French Smith, I am very pleased at the continued support of the Reagan Administration for S.529. If the Congress were to decide that the overall cap and changes in the preference system should be enacted at this time within the Immigration Reform and Control Act, would the Department of State continue to support the passage of the legislation?

A. Yes, although -- as set out in our testimony -- we would much prefer no such modifications of the legal migration system.

DEPARTMENT OF STATE
ASSISTANT SECRETARY FOR CONSULAR AFFAIRS
WASHINGTON

April 5, 1983

Dear ~~Mr. Chairman~~ Al:

You inquired about the assumptions underlying our projections of legal migration. These assumptions and their rationales are enclosed.

I hope you will find this material useful.

Sincerely,

Diego

Diego C. Asencio

Enclosure:
As stated

The Honorable
Alan K. Simpson, Chairman,
Subcommittee on Immigration and Refugee Policy,
Committee on the Judiciary,
United States Senate.

ASSUMPTIONS UNDERLYING PROJECTIONS OF LEGAL MIGRATION
(Further Reply to Senate Question 1)

1) Non-numerically-limited family reunification categories (i.e., Immediate Relative (IR), persons granted permanent resident status under section 214(d), etc.): Given the erratic pattern (in both absolute and percentage terms) of growth in these categories in the past decade, and the relative decline of the growth level in the latter part of this period, we assumed a 5% average -- consistent with the average rate of the last four years -- to be probably most realistic in this admittedly speculative enterprise.

2) Special immigrants (exclusive of returning residents): There has been a static level (about 2500-3000) of the historical components of this category and, based on experience to date, we anticipate a minimal in-take under the Panama Canal Act. The only unknown variable lies with proposed G-4 special immigrants, which proponents of this proposal estimate will not exceed an average of 2400 annually (except perhaps in the first year).

3) Numerically limited preference/nonpreference categories: No assumptions were necessary. Currently available data indicate sufficient demand to make use of all immigration numbers for the foreseeable future. There were more than 1.4 million registrants at Foreign Service posts actively pursuing their intent to immigrate as of January 1, 1983.

4) Additional IR demand arising from the legalization program: There was a close approximation of INS and Select Commission estimates of potential legalization beneficiaries -- 730,000 eligible for immediate permanent residence and 1.6 million for temporary status, according to INS. We assumed, as outer limits (and in deliberate preference to underestimation) that all potential eligibles -- using INS figures -- would achieve the appropriate status. (We realize that, if the experience of Canada, France, etc. can be deemed typical, this results in unrealistically high projections.)

We also assumed, because INS anticipates an 18 month to two-year full implementation period, we could reasonably divide equally -- for subsequent naturalization purposes -- the years of acquisition of permanent status. Further assuming enactment in 1983, there would be 365,000 each in 1984 and 1985, and, because of the three year requirement, 800,000 each in 1987 and 1988. None would be eligible for naturalization until 1989.

Although the degree and tempo of legalizations are necessarily speculative, there are data permitting more scientific estimates of potential naturalizations resulting therefrom: Specifically, the widely agreed upon breakdown of prospective beneficiaries as about 50% Mexican, 25% other Western Hemisphere, and 25% Eastern Hemisphere, coupled with known naturalization rates in the past decade of persons from these areas. Immigrants do not, for various reasons, necessarily become naturalized immediately after their first five years in the U.S. INS has provided a ten-year-from-entry cumulative summary based on 1972 entrants which was also taken into account.

	Area of Origin		
FY	Mexico	Other Western Hemis.	Eastern Hemis.
1977	.8	2.6	8.8
1978	1.6	7.4	22.0
1979	2.4	12.4	30.4
1980	3.3	16.1	34.8
1981	4.0	19.2	36.9

Based solely on these percentages, approximate figures for additional naturalizations per year of legalization beneficiaries would be as follows:

1989	12,000
1990	29,800
1991	31,500
1992	49,000
1993	80,000

There is at least one other potential variable: the extent to which world-wide oversubscription of the second preference will stimulate, if not extra at least earlier, naturalization by immigrants of all nationalities (i.e., not just the legalized from oversubscribed countries). Moreover, although it is unlikely that many immigrants would become naturalized solely to bring in their parents (in contrast to spouses/offspring), unquestionably some parents will further swell the growing numbers of Immediate Relatives.

In general, therefore, we made the assumption that all of these various factors will account for an increase of IR petition beneficiaries after the legalization program as follows:

1989	14,000
1990	28,000
1991	40,000
1992	51,000
1993	58,400

IMMIGRATION REFORM AND CONTROL ACT

MONDAY, MARCH 7, 1983

U.S. Senate,
Subcommittee on Immigration and Refugee Policy,
Committee on the Judiciary,
Washington, D.C.

The subcommittee met, pursuant to recess, in room 418 of the Russell Senate Office Building at 10:13 a.m., Hon. Alan K. Simpson (chairman) presiding.

Present: Senators Thurmond, Grassley, and Kennedy.

Senator Simpson. The hearing will come to order, and I appreciate having our good colleague from California here. We have two witnesses this morning at the hearing. This is the fourth hearing of this session on the Immigration Reform and Control Act of 1983.

I was in your town over the weekend, Pete, speaking to the City Club of San Diego and the agricultural personnel managers, which you might imagine was a very interesting session; and Russ Williams and Pat Guinn and the City Club, of course, a fine group of hospitable persons.

I know that you are familiar with many of the issues involved in this; this is a difficult issue for any California Congressman or Senator. It has proven to be so. You have the greatest impact of both immigration policy and refugee policy in your State. So I look forward to your perspective and know of the pressures that will shape your thinking.

But our good colleague, Senator Thurmond, the chairman of the Judiciary Committee, who has been extraordinarily supportive of this freshman's activity in these times with this issue, is here, and before he goes to open the Senate, Strom, do you have anything you might want to add?

The Chairman. Thank you, Mr. Chairman. Mr. Chairman, I just want to say that I am indeed interested in getting this bill out of the subcommittee as quickly as possible and on to the full committee. We need to take action on this measure. It is very vital, and it concerns the whole Nation, as well as other nations. I think other countries have got to understand just where the United States stands on this matter, and the quicker the better.

I don't think we can get any bill that is perfect; no legislation is ever perfect. But I think the bill upon which you have done such exemplary work and have tirelessly served to bring to the Senate is a satisfactory bill. Any suggestions that can be made to improve it, of course, especially the suggestions of the subcommittee or the full committee, will be seriously considered.

Again, I want to commend you for your drive, your desire and your dedication in getting this bill out.

I want to join in welcoming Senator Pete Wilson this morning. I have to go and open the Senate now, but I just want to say that we are delighted to have you with us, and I am sure your views will receive careful attention.

Thank you, Mr. Chairman.

Senator **Simpson**. Thank you very much, Strom. Chuck, did you have anything you might want to share?

Senator **Grassley**. Thank you. I want to welcome Senator Wilson to our committee deliberations and thank him for his input. In addition I would like to personally thank Mr. Kirkland for his working with us on the legislation last year and the great extent to which he supported the legislation as well. His input is very much appreciated.

The **Chairman**. Mr. Chairman, may I say a word? Mr. Kirkland is originally from South Carolina, so I want to join in welcoming him, too. We are very pleased to have the views, of the AFL-CIO on this important matter. It is an important matter to the labor force of this country; it is an important matter to our whole Nation. I am very pleased that Mr. Kirkland has seen fit to come and testify.

Senator **Simpson**. Thank you, Strom. I was saving some very good remarks for Mr. Kirkland when he arrives here, because indeed he, among many national figures that have shown great interest, in this endeavor, has gone on the line many times when it was tough to do so, and I am deeply appreciative of the support of Lane Kirkland and the AFL-CIO, or we would not be this far.

Pete, please, go right ahead—nice to have you here.

STATEMENT OF HON. PETE WILSON, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator **Wilson**. Thank you very much, Mr. Chairman.

I have an audience this morning, Mr. Chairman that I would not expect to be hostile to me personally I hope it will be indulgent to someone who comes to this body, after your long deliberations, with several questions. At the outset, let me say that your legislation, S. 529, is well-known to be the result of a long, thoughtful approach and a very conscientious, comprehensive, and strenuous effort to attack the problem of illegal immigration. It is a problem of enormity, complexity and urgency. This legislation deals with both refugee and immigration policy. This morning in the interest of your time and because I really have no questions with respect to the refugee policy, I would like to restrict my remarks to the portion of the legislation which deals with illegal immigration. I would first say that the praise that has been given you from many quarters perhaps was summarized best in Senator Thurmond's comments. You have given exemplary leadership to this effort, and I think you have received only a portion of the praise due you for that effort. This legislation is the product of extensive hearings and careful studies, including the valuable work of the Select Commission chaired by Father Hesburgh.

Given that history, given my genuine admiration for your efforts and those of others who have assisted you in bringing forth this legislation, and given the genuine urgency of the problems which it addresses, I regret that I come forward today not as one more voice in the swelling chorus of approval but rather, reluctantly, to raise these questions. I do so although the subcommittee has been long at its hard task, which makes me still more reluctant. It is my hope that the committee will have answers to my questions and certainly I do profess to know little of the information which you have acquired during these extensive hearings.

Nonetheless, the questions I raise this morning are serious and represent the concerns of those who share the subcommittee's eagerness to find solutions to the problem of illegal immigration and yet respond to the need for labor adequate to the requirements of California's economy and the Nation's.

EMPLOYER SANCTIONS

The legislation which you have brought before us is predicated upon employer sanctions and I think I fairly summarize what you have intended to do here by saying you seek to control our borders or to give this Nation control of our borders by eliminating an incentive for illegal immigration. Along with the others who have commented, I note with interest that among those whose statements will be heard by the subcommittee, is Lane Kirkland, a distinguished leader and spokesman of organized labor in America. I assume Mr. Kirkland is present today in an effort to protect American jobs for American workers, which is legitimately his concern and ours. I share his concern, as does every member of this subcommittee, in the hope that American workers will not be deprived of job opportunities by the competition from foreign labor. But in at least certain types of employment, that competition does not appear to exist, at least witness the provision which has been made by this subcommittee and others to provide a process called the H-2 procedure to allow temporary foreign harvest hands. So a first question, and one that is said in all sincerity and one that I hope will not evoke either a hostile or an incredulous response, is really to know just what hard evidence exists as to the extent to which illegal immigrants do take jobs from American workers?

Assuming that illegal immigrants do indeed take jobs from Americans, what evidence exists that employer sanctions do in fact discourage illegal immigration? The theory underlying employer sanctions is that undocumented workers will not come illegally if they are assured by this legislation that they will not be hired. But just how effective a deterrent are employer sanctions?

I am certainly not going to repeat what the subcommittee has heard at some length that the General Accounting Office report released August 31, 1982 indicates that employer sanctions have proved to be almost universally ineffective in discouraging illegal immigration. My question is what evidence has the subcommittee which contradicts that information and the conclusions reached in the GAO report?

Proponents of employer sanctions contend that employer sanctions have rarely worked only because they have rarely been enforced. Enforcement, they contend, will indeed deter illegal immigration. I ask in all sincerity, what are the facts? What information has the subcommittee which contradicts the GAO report?

Quite clearly sanctions imposed on employees, rather than employers, including even repeated deportation, have failed completely to discourage illegal immigration. The most recent evidence of this being provided by the aftermath of the widespread INS raids undertaken in pursuit of "Operation Jobs" last year.

Moreover, I would ask how effective are employer sanctions in checking illegal entry where factors other than the desire for employment are the motivation? The subcommittee has received extensive testimony relating to the costs to American taxpayers for services provided illegal immigrants and their families in the form of food stamps, welfare, health care, education, and other services. If the living is so markedly better on the U.S. side of the border, with or without a job, there is the same or even stronger attraction to immigrate illegally to reach that better life as there is for the jobless resident of the Frost Belt who picks up stakes and quite legally migrates to become a jobless resident of the Sun Belt. So I ask again in all sincerity, what information has the subcommittee on what numbers of aliens come illegally for reasons other than a job?

POTENTIAL FOR DISCRIMINATION AGAINST HISPANIC CITIZENS

And finally I would like to touch on something which is extremely sensitive and in that respect I am grateful for the conversations I have had with Senator Simpson. That is the problem arising from the possibility of discrimination, particularly against Hispanic workers. It would be bitterly ironic if—with the best intentions in the world—this legislation which is intended to protect jobs for Americans were to have the unintended, but no less cruel, result of taking jobs away from American citizens of Hispanic ancestry. And again, I know from the private discussions I have had with Chairman Simpson that he is not only sensitive to the problem of discrimination, but personally repelled by the practice. The good faith of the proponents of this legislation cannot be in question in any respect.

Yet the employer sanctions of S. 529 do without question create the potential for discrimination, and certainly have created fear among the Hispanic Americans who believe that they will be the unintended victims, but victims nevertheless, of a defensive discrimination practiced by employers who are simply seeking to avoid the sanctions. Prior testimony to this subcommittee has pointed out that the requirement in the legislation that employers verify an employee's legality and keep on file the verification form is a requirement which applies only to the employees who are actually hired and not to all job applicants. It is not a requirement which prevents the employer from choosing someone who does not look or sound foreign to avoid running the risk of hiring someone who is an illegal.

Proponents of the sanctions assert that protection of Hispanic workers against such discrimination is already afforded under the protections of the Civil Rights Act of 1964. With all due respect, the difficulty of the remedy afforded, that is, the difficulty in achieving the remedy under the legislation, does not begin to compensate for the problems of discrimination which I fear will be created by the employer sanctions. And if this proves true, we will be depriving ourselves of human resources we cannot afford to waste, and far more important, this free society will risk engendering real resentment, a deserved resentment among Hispanics who feel themselves excluded from work they want and deserve. We simply cannot have that.

GUEST-WORKER PROGRAM

I have also noted from conversations with the chairman that the idea of a guest-worker program is not new, and not only not new but is one that has met with resistance based upon experiments in other places. So again, I ask the committee to traverse ground I am sure it has already covered when I ask the question: would not a carefully regulated guest-worker program, admitting only the worker and not his family or dependents both avoid the need for elaborate and punitive employer sanctions, as well as avoid the European experience? It seems that the difficulty that has attended the guest-worker program in places like Germany has been as a result not of the workers coming, but of their families coming. It is, I think, the past experience of this country, in earlier and doubtless simpler times, that workers came without their families. Today, I know, there is, illegal immigration of not just able-bodied males but also of women and children and of entire families sometimes coming as families, sometimes coming individually to be reunited later.

Mr. Chairman, the committee has done such a workmanlike job, working as it has with the recommendations of studies made in preceding administrations culminating in the work of the Hesburgh Commission, that it is with great hesitation that I would suggest that what we are facing as we look at the problem of illegal immigration not to mention the urgency of the refugee problem, is the necessity to decide between two very difficult choices. On the one hand, it might seem that those who raise such questions are asking the committee to temporize and I recognize we cannot do that. The problems are of an urgency that require action. I would only ask that the questions that I have raised be answered.

And I raise them, mindful of the fact that I may be raising issues previously raised. Since this committee moved the bill last year, received the overwhelming support of the Senate, and doubtless would have received approval in the House given more time.

It makes me aware that the time for action has come, so I do not ask that the committee temporize. I am seeking information quite genuinely because, as the chairman himself has recognized with characteristic sensitivity, I represent not only a large State but a divided constituency. I represent those who in terms of the major industry and my State's economy have traditionally depended upon temporary foreign workers. I represent a growing number of Hispanic American citizens who rightly or wrongly perceive this legislation as posing a threat to them. I represent still others who, for reasons that relate to their simple interest in this as citizens, as taxpayers, wonder really what they are being required to do, and whether or not charity begins at home. These are not new considerations to this committee and to its members. You have labored so long and well that I hesitate to suggest that any further deliberation be taken. But in good conscience, I must do so and I hope that you will recognize my motivation for what it is. I thank the subcommittee for the courtesy at this hearing and will look forward to its response.

Senator SIMPSON. Pete, I really appreciate that, because that shows your—I think it shows your stamp that you are going to leave on this place in just your early weeks here, and that is thoughtfully addressing issues, and you did that in your time in San Diego, and you have a marvelous reputation there and they take great pride in you. You and I have visited, and I say, with all the sincerity you have just expressed, that each and every single one of those terribly pungent personal observations have been addressed again and again and again—and will be addressed again and again and again.

So when you speak of the swelling chorus of approval for this legislation, I have never heard that yet; I am waiting for that to crush out my sound.

You asked some tough questions, and there are some hard answers for those tough questions. Again I say that in my travels, and the travels of Congressman Mazzoli and myself on many visits to California, I really doubt that we will ever find or be able to generate legislative support for this legislation in California—it doesn't matter what party you are in, it can't be popular in California to resist the various chamber groups, the various grower groups, the various Hispanic groups, and certain union groups. So if I were a legislator, I would be right in there thinking that way too. I understand that totally, I really do.

The Select Commission, in its years of activity, under two chairmen, Ruben Askew and Ted Hesburgh, never really did care to address the issue of do illegal aliens take jobs Americans won't take, because that is something that is a separate issue. This is not a jobs bill in any sense, it is not a protection-of-American-labor bill in that sense. Its first and only thrust, and principal source, is: The first duty of a sovereign nation is to control its borders, and we don't.

So the issue of jobs and what jobs illegal aliens take, there is no concrete evidence on that, and it was not dealt with by the Select Commission. However, since that time there have been a couple of interesting things which have surfaced and I would refer you and your fine staff to a Rice University poll indicating the displacement of legal workers of up to 70 percent in the Houston area; that was conducted by Dr. Huddle, an economist at Rice. And then a California survey by a San Diego firm, finding that most California businesses now are "dependent on illegal alien labor," and quite lawfully dependent on illegal labor, but could increase their wages sufficiently to attract U.S. workers and continue to make a profit. That study was done by a Dr. Nelven of San Diego who presented the study to us; it has some interesting elements.

So I would recommend that that might be something to review. There was also a Dr. Vernon Briggs of Cornell University, who provided some interesting views on this issue, and I know that your crew might like to take a look at those as well.

The GAO report on employer sanctions—we found that to be extraordinary. We have the French trying to pay people to return to Turkey, and they won't go; we have the Germans trying to pay the Turks to return to Turkey, and they won't go; we have the issue of the situation where you say we ask for a guest worker and you sent us a human being—you touch on that. So we now find that since the GAO report we have situations where the various governments having been most heavily impacted and heavily affected, Germany and France, have now tightened their laws most extraordinarily since the GAO report. New laws to increase the effectiveness of employer sanctions went into effect on January 1, 1982 in both of those countries, and the effect of those changes is not reflected in the GAO report.

The reason that employer sanctions have never worked in the United States of America is a very simple one: as long as employer sanctions can simply be considered as a cost of doing business, that's the end of employer sanctions. And that is why they have never worked. I think one penalty has been assesssed in some 12 States, a $250 fine in Michigan, if I recall.

In Canada, where they did not view employer sanctions as an enforcement priority—they just considered it as something other than enforcement—it is now a higher priority—sanctions have become an enforcement priority in a November 1982 report in Canada recommending that the sanctions of the 1976 law should be applied more stringently and recommending that they do something along the lines of whatever they were doing down in America with regard to it.

Other countries, I would recommend that you might take a look at Switzerland—that is where each canton and community is responsible for identifying workers; there have been some serious questions there.

Control of illegal immigration through employer sanctions is a Federal responsibility; States or cantons or communities are not able to get it done. California has the sanctions law on the books, but its law states that after the general prohibition on the employment of illegal aliens, it says "if such employment would have an adverse effect on lawful residents." And heaven knows what the burden is on government in that case, and it is rarely, if ever, enforced.

But I think the thing I would share with you, Pete, is that in every instance where these laws are on the books, employer sanctions, they are not being repealed, but rather they are being amended to increase their effectiveness, and I think all of this is happening since the GAO report was issued. In Hong Kong, a colony which has had substantial illegal immigration pressure, it is working there.

So I would share those things with you. The H-2 question is what I have been visiting with your constituents about over the weekend and I would share with you that we have spent more time on H-2 than perhaps any other area, and it was the toughest part of all: Much effort was directed toward the H-2 question; I can tell you extraordinary effort went to that. How do we fashion something that is not a guest-worker program or a bracero program, and yet does not then take advantage of American workers?

And so you have indicated your support for a type of temporary program like that, and you have asked some good questions—and I am rambling a bit in hope to address some of them. But just one other, and then I do want to ask you about your sincere views about a worker program.

The issue of discrimination, as you say, being bitterly ironic is indeed something we try to guard against completely here. It is at least the feeling of the subcommittee and the full committee, and I think the Senate and the Select Commission, that when you have an American public that has not yet changed their attitude for some 15 years, by every poll taken—Gallup, Roper, you name it—which says that 90 percent of the American people want to do something about illegal aliens period, to limit them, and 85 percent say they want to do something about legal immigration, then that is the issue that we must address.

It is the feeling that if we do nothing at all discrimination in this country will only increase, and that in effect by doing nothing with this undercurrent of activity there is presently, we will find that indeed we will have more enforcement, more INS enforcement, more border patrol enforcement, more operation you name it, more intrusions, more sweeps, and that finally, at that point, after an employer has been busted about three times, he says I know how to prevent that: I'm never going to hire anyone again who looks foreign. That seems to me much more discriminatory than whatever could take place under the bill.

And I am convinced, after visiting with your California growers, that it is not greed that makes them resist this legislation; it is not a case of, we want to pay them less than the minimum. The issue is: When God's bounty is ready to harvest, they have got to have the horses to harvest, and when the figs get hammered to the ground, you got to have it done; when the peaches are ready, it's got to be done. Under present law, they can't get through the thicket sometimes.

So I would ask just one question: How are we to assure that workers will return home when their visas would expire, or their permits would expire, during any kind of temporary program? How are we to assure that those workers do not displace American workers or shift to jobs for which Americans are available, realizing that only 15 percent of illegal undocumented workers work in agriculture? How might we insure that the rights of the foreign workers are enforced so that exploitation, as characterized by the bracero program, does not again reoccur?

Senator WILSON. Well, Mr. Chairman, it's your turn to ask the tough questions, and I readily acknowledge that it would be very, very difficult, and I assume that the subcommittee has pursued that alternative. One alternative, I suppose, is to require a different responsibility of the employer. The responsibility would be to assist in keeping track of those whom he has hired on a guest-worker program. I think in the times when there have been guest-worker programs, legal guest-worker programs, there has been little effort made to in fact keep track. There was apparently not a great deal of need perceived in an earlier time when primarily agricultural workers came and went fairly regularly. There has, as the subcommittee has determined over a period of years, apparently been a change in the pattern of immigration. It used to be that the only people who came, at least in terms of the very influx of Hispanic workers from Mexico, were youthful rural males. And I think that what we can anticipate, quite clearly, with the worsening of the economy there, the crisis that has resulted in peso devaluation, and the crisis that has resulted from peso devaluation, that the pressures are ever greater.

The answer to your question I think is that one alternative is to gain the assistance of employers in keeping track of the workers. And I know that that is what is actually envisioned in the revisions that you have sought to make to the H-2 process.

The problem, I would agree, is a different problem as it relates to urban and agricultural workers. And I think that there is far less danger of competition for American jobs in the agricultural setting. I think you have described very well the situation: At harvest time there is the need for the hands, it's not a permanent need, but it is an urgent need at the moment. And I think you are quite right, that while there will always be a minority who rather cruelly exploit their employees, legal or illegal, and certainly those faced with an illegal status are subject to that exploitation to a far greater degree, the majority are simply looking for labor that they cannot get from anybody else. The majority, I think, in many instances, are quite willing to pay better than the minimum wage, because it is very difficult work.

The answer to your question I think is that there is not any solution that is going to be 100 percent effective. The problem is that we have a long land border, that we have tremendous economic disparity on the two sides of that border. Things that we have not discussed this morning, which are obvious considerations, are an entirely different approach. The approach of a guest-worker program, combined with rather massive aid, investment of the kind that some are being criticized for having made now in the Republic of Mexico, and another thing, which is obviously a two-edged sword, because I suppose in some instances it is creating a risk of violation of the Helsinki accords—but you have the situation in which some countries, I know, are now restraining emigration; they do not want their talent leaving. That clearly, while it may be a concern to the Mexican Government, has never resulted in their taking those steps.

Senator SIMPSON. Well, I appreciate very much your coming here, and I think you would be interested to note that outside of California organized groups, that this subcommittee received more mail from California persons—residents, permanent resident aliens, and citizens—than from any other State, urging approval of the legislation; that we get off our duffs and do something about a problem that is very evident to all of us. And so we try to do that, and, of course, the key will be to avoid discrimination, but we think we have built that into the bill, and we intend to have some subcommittee discussion on it to see if we can build in further safeguards with regard to the assurance that discrimination does not take place. I will be looking forward to a wingspread conference in Wisconsin in early April among Hispanic leaders on both sides of this issue. I will be there.

And that, I think, could bring some light into something which is often filled with heat. Because legalization now becomes the battle cry of the Hispanic community, and I have always listened to that one and tried to be very attentive. But without some kind of employer sanctions, I do not see, as Ted Hesburgh says, how there can possibly be legalization; the people are not going to legalize unless they are sure that it isn't going to happen again. And the only way you are sure it isn't going to happen again is employer sanctions with some type of verification—my former chairman on the Commission and myself are being most generous and will continue to do so, but there are some who would say don't do anything with legalization until we actually have employer sanctions in place. We don't choose to wait that long; we choose to be as generous as we can now.

So it's a tough one, and you have recognized it already, and welcome to the club on this issue. Thank you very much.

Chuck, did you have any questions?

Senator GRASSLEY. Pete, is it your perception that there is a farm labor shortage in California?

Senator WILSON. Yes, there is; there is a great seasonal need. California is an interesting State agriculturally: It is not only the largest producer, but it is different than the kind of agriculture which you find in the South and the Midwest—there are a great many specialty crops. There is an opportunity for the seasonal worker to pick several crops in succession as they come to harvest at different times.

But I would say, if I may paraphrase your question, there would be a very severe problem created if it were not for the availability of foreign nationals. The chairman has very correctly characterized that industry as being dependent upon them, and, as he points out, it is lawful, even though the workers themselves are not.

Senator GRASSLEY. Dr. Robert Coltrane, farm labor specialist for the Agriculture Department, says it is his judgment there does not seem to be a major shortage of farmworkers in the United States. In addition another source I had was a statement in a newspaper article I read during the last Congress that indicated no need to import guest workers. The article quoted a man who stated that he was 833d on a list of more than 1,000 United Farm Workers waiting for jobs. We have had similar sentiments echoed before the committee, and I only suggest that there is an honest difference of opinion whether or not there is a shortage. I appreciate your opinion.

Are you stating that if we just expand the numbers enough to accommodate the people who would normally come in this country, that that would solve the problem?

Senator WILSON. You mean, Senator, expand the immigration quota?

Senator GRASSLEY. The guest worker numbers—it's implicit that that would take care of the problem.

Senator WILSON. Yes.

Senator GRASSLEY. And hence there would be no need for employer sanctions—isn't that more or less what you are saying?

Senator WILSON. Yes, it is.

Senator GRASSLEY. Would you suggest that the numbers be expanded to accommodate 3 to 6 million undocumented workers or aren't you talking in terms of that?

Senator WILSON. Well, I would not assign a nationwide figure, very candidly, because I do not have sufficient information to do that. I do think that the information exists; that makes it possible to come up with a realistic figure. And I note that the administration, before they abandoned their own legislation to support the Simpson-Mazzoli legislation, did envision a guest-worker program, although one of rather modest dimensions, modest in light of the need.

And I think that it is possible—well, I will put it this way: Even if you determine that you needed employer sanctions, I would think that perhaps the better part of wisdom might be to have a realistic guest-worker program expanded to realistic levels, and then if you determine that an employer sanction is necessary in terms of the legalization, of which Chairman Simpson has spoken, that you would find that they had a much smaller task, that those who were actually policing and imposing the employer sanctions, could do so on a level that was more nearly addressing actual violations.

Senator SIMPSON. Thank you very much, Pete.

Senator WILSON. Thank you very much, Mr. Chairman.

Senator SIMPSON. I appreciate the way you follow up and look forward to working with you on it.

Senator WILSON. Thank you, sir.

Senator SIMPSON. Now, our final witness this morning, Lane Kirkland, please, president of the AFL-CIO.

Good morning, Lane. Let me tell you how much I appreciate your taking time from an exceedingly tough schedule, which must match ours in every sense, and I apologize for the delay in getting to your testimony. I assure you that you may take as long as you might wish.

I deeply appreciate your interest, your support, and that of the AFL-CIO in this legislative process in the last Congress, and look forward to your continuing interest. I express to you my rich appreciation for the very excellent statement on immigration reform that was made in your recent conferences in Florida. You and I have personally discussed this legislation on several occasions, and you understand the minefield that I gallop through like a 7-foot flamingo. When we open the door a crack here, it twists and skews the other side, especially in the temporary worker program. You have been very patient to watch me anguish in that. You could have done some good head-bonging at any point, and I appreciate it you did not.

But, as I say, you and I have discussed this openly and honestly, and Ray and your people, Jane and Peter and all of you, have testified before, and you bring this rich background to the issue, plus a thorough knowledge of the debate, and you know, more than any, what reforms are needed as you hearken to the real concerns of your very diverse affiliates within the flock of the AFL-CIO. I just appreciate your thoughtful and steady viewing of this very serious national issue, and I am sure that that is shared by the ranking member of this subcommittee, a person who chaired this issue for some 15 years before when he came to be chairman of the committee. It was of such great interest that he took it into the full committee for his attention, and has been of great assistance to me—and I know at this time perhaps Senator Kennedy might have a remark. If you do, Ted, or if you would like to reserve that—anything you might wish.

Senator **Kennedy**. Thank you very much, Mr. Chairman, and I want to welcome President Kirkland to the committee. And I also, Mr. Chairman, want to take note of the recent resolution that was passed at Bal Harbor by the AFL-CIO executive council on this issue, and I want to thank President Kirkland for getting his testimony up to us. I have had a chance to review it over the period of the last couple of days, and I think it's very, very helpful.

I probably won't be able to remain through the course of the complete testimony, but I would hope you would comment on one of the points that was addressed by the AFL-CIO, and that is the dilemma which I think you have commented on, and that I know has been a matter of central concern, and that is the balance between the protection of individual rights and the concern that all of us have about the utilization of employer sanctions for discriminatory purposes. I think the AFL-CIO has made some valuable suggestions on addressing this issue and I know you are very concerned about it.

I know during the debate last year we had talked about a guest-worker program on the floor of the Senate, and I would hope that Mr. Kirkland would address, as the leader of the working men and women in this country, the concerns he has about the development of a guest-worker proposal, because I imagine that will be something that will come up on the floor of the Senate. I think there are some very good arguments against it, but I would be interested to hear those arguments made. Also, over the issue of involving the Department of Agriculture in the H-2 enforcement provisions. Given the problems that we have of unemployment in our society, your comments in these areas will be very valuable to this committee.

I want to just thank Mr. Kirkland for coming up and making this case. I think it shows the importance that the AFL-CIO places on this issue And I want to join in welcoming him to this committee.

Senator **Simpson**. Thank you, Ted. Would you please proceed, Mr. President, go right ahead.

STATEMENT OF LANE KIRKLAND, PRESIDENT, AFL-CIO, ACCOMPANIED BY RAY DENISON, LEGISLATIVE DIRECTOR, AFL-CIO, AND LARRY GOLD, COUNSEL, AFL-CIO

Mr. **Kirkland**. Thank you, Mr. Chairman. I have with me today Ray Denison, our legislative director, and Larry Gold, counsel for the AFL-CIO. I appreciate both this opportunity to present the views of the AFL-CIO on immigration reform and your consideration in making time in your schedule today to provide that opportunity.

As you know, the AFL-CIO has long sought new legislation on immigration that would respond more effectively than does the current law to the surge of unauthorized migrants into our country, and to all of the resulting ills.

We said to you just less than a year ago that the original Simpson-Mazzoli bill was "in general consistent with the goals of the AFL-CIO," and should, "with some modification and improvement," be adopted. Since that time, both your original bill and our perception of what must be done to achieve what I firmly believe to be our shared goals, have undergone change. It is, therefore, my purpose in this testimony to tell you where we stand, to explain the modifications that we believe the present bill requires, and to urge this subcommittee's rapid favorable action upon the bill thus modified.

I would state these shared goals to be as follows:

One, a legislative prohibition on the employment of undocumented workers—backed by substantial and workable sanctions to deter employers from violating that prohibition—is the single most important deterrent to illegal immigration. We know from experience that there are employers who will, given the chance, capitalize on the desperate need of undocumented aliens to find and keep a job. We know also—particularly by reason of the concerns voiced last year in both Houses of Congress—that there are widespread and deeply held fears that the enactment of sanctions will lead to employment discrimination against individuals on the basis of their national origin or race. Any bill worth passing must address both aspects of the problem.

Two, fairness requires that a bill providing such sanctions must also provide employers, who wish to comply with the law, a sure and simple means of so doing. So far as we are concerned, this means that the bill must establish an identity and eligibility verification system that is secure, and must assure the employer who uses this system that his good-faith reliance thereon meets the law's requirements.

Three, at the same time the steps just outlined are taken, steps must also be taken to legalize the status of those aliens who, though their presence in the country is not authorized, have become settled, contributing members of their communities. Thus, we support the most generous practical legalization program for such persons. Unless that is done, we will as a society be contributing to the continuing victimization of an underclass, made up of those whose fear of deportation makes them vulnerable to exploitation by unscrupulous employers and who are unable to protect themselves or to call upon the Government for protection.

Four, importation of foreign nonimmigrant workers for short-term or long-term temporary jobs must be limited to the greatest extent possible and confined to the specific purposes presently authorized by law. This has two practical implications: First, administration of the existing law must be substantially improved so that nonimmigrant visas to workers are issued only to persons who meet the specified requirements. Three present immigration programs have an adverse impact on American workers—those covering H-1 visas, H-2 visas, and B-1 visas. All three have been misused to admit nonimmigrant aliens who do not meet the requirements specified by Congress; second, the Congress should not enact any guest-worker or bracero program.

Five, border and interior enforcement of the immigration laws must be strengthened principally by affording the Immigration and Naturalization Service the additional resources necessary to do that enforcement job.

Without attempting to get into the niceties of the legislative language, I wish to return to each of these matters and to provide certain particulars.

EMPLOYER SANCTIONS

Substantial and workable sanctions for violation of a prohibition are the heart and soul of the prohibition. Unless such sanctions are included, enacting new prohibitions is a meaningless formality. The present immigration law may be the single best demonstration of that proposition.

That may sound like a call for increasing the bill's criminal sanctions, but it is not. We understand the limitations of the criminal law enforcement process. The cost, the competing demands upon Federal prosecutors, and the reluctance of the Government in matters of this kind to proceed with anything less than the clearest cases means that criminal process will be used rarely.

Thus, civil remedies that will cause a potential violator to pause before action and, upon reflection to refrain from committing a violation, must also be provided. While we have doubts about the efficacy of the rather complex administrative enforcement procedure in title I of the bill, we believe that with relatively narrow and straightforward amendments that procedure can be made to work.

In essence what is needed, we believe, is: a substantial increase in the civil penalties for knowingly hiring unauthorized aliens and a graduated schedule of such penalties for repeated violations; granting the Attorney General the authority to obtain an injunction against any employer who is found to have committed a second such hiring violation or who engages in a pattern or practice of such hiring; and a private right of action for persons aggrieved by the knowing hiring of an undocumented alien. Such a private right of action should be modeled on the right to sue given to individuals under title VII of the Civil Rights Act. Finally, we believe that actions to collect civil penalties should be in the Federal courts of appeals, which are familiar with such enforcement actions, not in the district courts.

IDENTIFY VERIFICATION

The AFL-CIO fully agrees with you, Mr. Chairman, that a system for verification of the identity of job applicants that will demonstrate the individual's legal entitlement to work and that is secure and forgery-proof is essential. As the resolution on immigration recently adopted by our executive council stated, "The legislation we seek must enable employers to ascertain in simple fashion the eligibility for employment of those they hire, and it must insure that employers cannot use these sanctions as an excuse not to hire legal resident aliens or citizens who 'look foreign.' "

The bill goes far toward meeting those criteria, particularly through its requirement that within 3 years the President is to take any and all steps necessary to render the verification system truly secure. But with regard to these provisions, too, we believe the bill falls somewhat short.

The exemption of employers of 3 or fewer employees cannot be justified. Universality of the requirement that employers inspect and attest to the adequacy of a job applicant's documents is an indispensable protection both for those employers and for the Hispanics and other minorities who reasonably fear that discrimination may follow the bill's enactment.

We urge also that a provision be added to the requirement now in the bill that under the verification system which the President is to establish, "a verification that an employee or prospective employee is eligible to be employed may not be withheld for any reason other than that—the person—is an unauthorized alien." That is a fundamental safeguard, but it does not go quite far enough: the bill should provide as well that, once issued, any such verification, whether in the form of a document or in some other form, may not be revoked for any reason other than a legal determination, after proper proceedings, that the person is in fact an unauthorized alien.

It is our view that the verification system is so important that it must be safeguarded by enforcement provisions of greater substance than those provided in the bill. We have in mind increases in the civil penalty and a graduated scale of penalties for first, second and subsequent employer failures to comply with the identity verification requirement along the lines proposed by the House Education and Labor Committee. Because injunctive relief is so clearly the most effective remedy, we believe that provision for such a remedy must be made—something S. 529 neglects to do.

DISCRIMINATION

I spoke a moment ago about the discrimination that some fear may be encouraged by enactment of this bill. Two proposals to meet this concern that were offered in the House last year seem to us well-suited to the prevention and correction of any such discrimination. One of these would require employers to keep a record of the names and addresses of persons who apply, but are not hired, for a job within a designated period prior to the time the job is filled, which record must be made available to law enforcement agencies. The other provision would create a private right of action so that a job applicant who believes himself or herself to have been discriminatorily denied employment may challenge that denial through the administrative system provided in the bill.

LEGALIZATION

In our view, as in yours, legalization is the counterpart to the prohibition on hiring of undocumented workers. As we move to close our borders to those not entitled to enter, we must regularize the status of those persons who are in our midst, functioning as law-abiding and contributing residents of their communities. These persons are uniquely disabled from claiming equal treatment, whether in wages and working conditions, the right to bargain collectively, or even the right to local police protection. Their susceptibility to deportation renders them victims. The AFL-CIO Executive Council resolution therefore called for "the most generous, practical amnesty for these people."

In legislative terms, we believe this means that permanent legal resident status should be made available to aliens who have lived in the United States continuously for some reasonable period of time and who have a demonstrated attachment to the community. We are seriously concerned about the two-tier proposal in the bill which would give only temporary legal status to some. We foresee a host of human and administrative problems, should a two-tier system be adopted.

Finally, when an eligible alien applies, the Attorney General should be required to adjust the alien's status to that of legal resident. We do not know why S. 529 provides that "The Attorney General may, in his discretion * * *" make that adjustment, but it appears to us that if Congress makes the judgment that legalization is good policy, then the executive branch should be obligated to follow that policy.

THE H-2 PROGRAM

We are aware of the contention by agricultural employers and their advocates in the Congress that those employers, having become dependent upon a ready supply of undocumented workers, cannot now be deprived of that manpower source without being provided an alternative in the form of unlimited numbers of H-2 temporary workers. We cannot comprehend such an argument at a time of unprecedented unemployment and want. We know firsthand, we read in the daily press, and we see on the television, great numbers of persons pleading for a job, any job. True, there may not be a perfect match between the jobless and the agricultural jobs that we are told will go unfilled if title I is approved, but we believe the burden must be on those making the anticipatory hardship claim to provide evidence, not simply argument.

The AFL-CIO, in short, continues to oppose any program which would permit importation of foreign labor to undercut the wages and working conditions of American workers. All such "bracero" or "guest-worker" programs are contrary to the interests of American workers, whatever label may be given them. A bracero program was tried and found wanting and was rejected by Congress in 1962.

We continue to support the recommendations of the Select Commission on Immigration and Refugee Policy that the Government, employers, and unions should cooperate to end dependence of any industry on a constant supply of temporary foreign workers, to remove current disincentives to hiring U.S. workers, and to maintain labor certification by the U.S. Department of Labor.

On the particulars, we commend to the subcommittee the work done on this subject last year by the House Education and Labor Committee. I wish to underline the importance of protections contained in that committee's proposals for both American workers, who must have first claim on jobs on these shores, and those foreign workers here temporarily to fill positions for which, demonstrably, there are no American workers. These include a limit on the length of time of certification; Department of Labor certification; the requirement of nationwide recruitment of U.S. workers before certification for temporary foreign workers may be issued; retention of the present certification test (that there are insufficient "qualified workers available" to perform the work); employer disbarment; application filing time; and a prohibition on issuance or continuance of a certification where a strike is in progress. The points I have underlined are no more than codification of present regulations.

BETTER BORDER CONTROL

We strongly support an increase in border patrol and other enforcement activities of the Immigration and Naturalization Service in order to prevent and deter the illegal entry of aliens into the United States.

It should go without saying, but regrettably must be said, that this purely Federal function must remain the province of the Immigration and Naturalization Service in order to assure that it is the laws of the United States that are carried out and not local views, whether those views represent local law or local prejudices. It is profoundly disturbing to learn that the Attorney General has directed the INS to foster State and local law enforcement officers 'involvement in the policing of the immigration laws. This new policy can only stimulate the fears of Hispanic persons and others whose appearance is different from that of the local majority. One might have thought that the Justice Department had suffered enough self-inflicted wounds in its role as protector of civil rights, but that is apparently not the case.

Adequate support by the executive branch and adequate funding by Congress are the heart and soul of the matter. As we have in the past, we urge that the funding and staffing of the INS be increased to the point where this Government agency can perform its important mission of controlling immigration to the United States. We note further that to improve administration and employee morale at the long underfunded and long understaffed INS, it will take better pay, better working conditions, better benefits and resolution of longstanding labor-management problems.

We insist on color-blind enforcement of the Nation's laws on immigration and asylum. There is a widespread perception that Haitian refugees seeking asylum in the United States have been treated in a manner different from the treatment we have accorded other refugees. We believe such differential treatment is an affront to human dignity and we call on Congress and the administration to reject such differential treatment.

Immigration, legal and illegal, is a complex, difficult and politically charged issue. The AFL-CIO will support you in your efforts to get action by Congress this year on comprehensive and humane immigration legislation that is consistent with the needs and goals of American workers.

I appreciate this opportunity to present some of the concerns of the AFL-CIO.

Thank you very much, Mr. Chairman.

Senator SIMPSON. Thank you very much, Lane, that was a very powerful statement, and certainly becomes a part of the record as we continue to grapple with this issue.

Just a few questions if I might inquire. We had some testimony the other day Senator—rather Mr. Hesburgh—I suppose he could be Senator if he ran up there and if they would let him do that—but he shared with us very sincerely the fact that legalization, which is the most generous that has ever been extended by any country on earth in this legislation, cannot really float by itself; that it has to be tied to employer sanctions. I would like your comments on the role of both employer sanctions and a legalization program. What would be the result if we were to attempt to enact one without the other?

Mr. KIRKLAND. Mr. Chairman, clearly, it has been our consistent view, from the very beginning and going back some years in examining this entire question. There are two essential requirements, employer sanctions and verification. The object being to stem the flow, to address the particular attraction in this country that has caused these waves, massive waves of illegal immigration that, to our way of thinking, can clearly not be done without employer sanctions; and we believe that they should be effective employer sanctions, and not sanctions in name only.

This leads to the question that once you have stemmed the flow and provided those sanctions, what do you do about those who are here, whose numbers no one really knows, but I have heard a range of some 3 million to 12 million talked about. Clearly, we cannot as a country with our values undertake massive roundups of millions of people and the movement of millions of people out of this country. To me, that is inconceivable. And it argues for the broadest possible legalization, leaving as few as possible in continuing illegal status, and modifying as much as possible the problem of enforcement. And I think they are integrally, they both flow out of all of the considerations that go into the construction of this legislation.

Senator SIMPSON. Could you elaborate a bit on how you perceive, and your organization perceives, how illegal immigrants affect the wages and working conditions of the U.S. work force?

Mr. KIRKLAND. In a group of intimidated workers who are deprived by their nature of their position in this country, deprived of access, effective access, to all of the instruments of self-protection, to access to laws, legal protection, access really to the protection of self-organization and freedom of assembly, and all of the rights that citizens have in this country, are almost by definition exploited persons. This exploitation undercuts the opportunity for other workers to maintain their standards by affording those unscrupulous employers an opportunity to secure labor of a kind that will not complain if the minimum wage is not paid, much less the prevailing rate; and who will not seek recourse. That has been the case for too many years.

Senator SIMPSON. How does this proposal, this legislative proposal program of employer sanctions and worker verification affect the problem of discrimination in the workplace as you perceive it? It is certainly self-evident that we have guarded against, guided against, and tried to draft against possible discrimination. I'd very much like having your views on that.

Mr. KIRKLAND. This is an issue, Senator Simpson, that everyone involved in this measure of course has to be extremely sensitive to. But I find it very difficult to persuade myself that there is anything in the proposed legislation as such that would increase discrimination or aggravate the problem that already exists. The problem exists by virtue of present circumstances that exist today.

I believe that the steps in the legislation and the steps that we propose in our suggestions, would go a long way toward mitigating any possibility of discrimination. The mere fact that we have laws in this country against discrimination indicates, as a result of long generations of experience that's proven the fact that there is discrimination, that it is of such a character as to require legislative action. It is a danger and it needs to be addressed.

I believe that by providing an employer with a simple, safe harbor, through these verification documents and the simple inspection of those documents, that the safest way for him to proceed is to hire a documented person. And we reinforce that further by a simple private right of action, if there is reason to believe that there is discrimination based upon national origin or race, color, and any of the considerations you have to address.

Senator SIMPSON. You and I have mentioned previously in discussion that there are certain affiliates within your great umbrella organizations who have perhaps a considerable number of illegal aliens among the membership, and that is something you have shared with us in candor.

Mr. KIRKLAND. Yes.

Senator SIMPSON. How do those affiliated groups that may have groups of illegal aliens within them view this legislation? Do they view the legislation as having positive influence in light of the generous legalization provisions, or negatively in light of the employer sanctions provisions?

Mr. KIRKLAND. I think positively on both counts. It is a complex question. Those of our organizations who have large numbers of members of Hispanic origin particularly are especially sensitive I think to the possibility of discrimination and exceedingly alert in their concerns that there be no enhanced prospect of discrimination.

We have had long discussions and examined this issue at great length and the statement that you have, I believe, that was adopted a few days ago by the Executive Council at its February meeting was unanimous and was supported by all of the organizations represented on the Council who are a pretty good cross-section, including those organizations that I mentioned that do have substantial numbers of Hispanic members. In the process of organizing a plant, they don't apply a litmus test to those they take into the organization, but accept all people employed in the membership, and do not want them mistreated.

Senator SIMPSON. Just a couple of other questions.

As I said before, we have really tried to hear what we must know about H2 workers and temporary agricultural workers and as you know, I have expressed to you that I don't want any private or guestworker program; I don't want any part of a return to the Bracero program and now I have to assure that the legislation reflects that deep intent, which I think is shared by every member of the full Committee and the Subcommittee.

Most of the H-2 changes in this new legislation, which is similar, of course, to 2222, applies only to seasonal agricultural workers; and we heard member testimony where the American immigrant work force has dropped from 400,000 down to 200,000 in the last 10 years, including those who move around the United States, U.S. citizens, permanent residents, including those who for a kick in the summer, like to go pick strawberries, including all of that work force. It is now down to something around 200,000, and that there are 300 to 500,000 illegal aliens supporting this seasonal work, which clearly outnumbers any U.S. migrant farm worker population.

So the provisions of the existing H-2 clearly don't do this transition of illegal workers. We had about 18,000 agricultural workers admitted under H-2 in 1982.

So admittedly—and I share your view—the protection of U.S. workers must be paramount. It is for this reason that we maintain a standard that no H-2 workers can be admitted unless the certification process is met, that is, that there are no able, willing, qualified American workers available to perform that agricultural task; and that the hiring of the foreign temporary worker will not adversely affect the wages and working conditions of American workers. In S. 529 we now mandate a statutory role for the Secretary of Labor in the H-2 program. For the first time this legislation gives the Secretary the statutory authority to enforce the terms of H-2 contracts by imposing appropriate penalties and seeking appropriate injunctive relief. That is part of the bill on page 10. There is a different injunctive relief available in regard to employes sanctions. We also provided over here in H-2 specific performance, the type of language for both H-2 and U.S. workers; and then we do provide $10 million under that H-2 program for the Department of Labor to recruit American workers as necessary for temporary jobs which might otherwise be performed by H-2 workers, and to monitor the wages and working conditions for all workers employed.

So we think we made an attempt to be responsive and sensitive to what you are saying. I realize it is a tenuous thing that hangs together like a thin spider web; but we have strengthened the protections, or tried to, and retained the job-by-job adjudication procedure; yet, I still am convinced that we need some type of transition for those who have legally become dependent upon illegal workers and we would like to think that legalization is the tool to do that. In other words, a new flow or a new status of legal aliens, either temporary residents or permanent residents. I also heard your comments about the two-tier legalization program, and will address that in the subcommittee.

Now, that was a long rattling on for a question I actually am going to pose. If the H-2 provisions of S. 529 are not enacted, how might you propose to prevent an economic disruption considering the fact of a shrinking U.S. migrant working force, strictly in agriculture?

Mr. KIRKLAND. Well, Mr. Chairman, I believe the present law, and the safeguards that you pointed to that are essentially the legal safeguards in the present law, is capable of addressing that problem, if it exists, and I think there should be required to be a clear showing that it does exist.

I would also point out that with the generous legalization—you don't lose that work force. It is now walking around illegal. Those people are not going to evaporate. They are there and they are legal and available to perform the same kind of work that they had hitherto been performing. So we don't see, we think there hasn't been demonstrated, a need for going beyond the existing provisions of law and administration of the H-2, H-1 and B-1 programs.

Senator SIMPSON. I know of your support of a the select commission's recommendation that we somehow end this dependency upon foreign workers in the United States, and we have included that as a goal in this legislation and certainly it is a long-term initiative; but how do you suggest that we might best pursue, regardless of the timetable, the issue of reducing dependency on foreign workers?

Mr. KIRKLAND. Well, I sing our old refrain, sir; if we have 10.4-percent unemployment in this country across the board, 15 percent with Hispanics, higher levels for the blacks, much, much higher levels with minority teenagers, we have a Third World population in our own country that is under-employed and I think we ought to take those steps necessary to create the opportunity for employment for them. Perhaps if we get to a point where unemployment is reduced to 3 or 4 percent, that might be a realistic question, but we are a very, very long way from that today.

Senator SIMPSON. Let me ask you just one more, and I know your feelings about the lessening of the Secretary of Labor's role in H-2, but again limited to H-2A which is agricultural loans, do you have real problems with some role of the Secretary of Agriculture in agricultural H-2 issues. I am not talking about the point person. We envisioned the Justice Department, the Attorney General with consultation with the Secretary of Labor and the Secretary of Agriculture. It just seems to me, and I share it with you, that it is perplexing to me that through all the history of the H-2A, which is an agricultural temporary work program, that the Secretary of Agriculture has apparently always sat it out. And I am not saying that they should be thrust to a central role. I would surely be interested if you perceived that some role would be appropriate for the Secretary of Agriculture?

Mr. KIRKLAND. Well, I believe, Senator Simpson, that this program is essentially a program that ought to be directed towards the interest and protection of workers. That's the function of the Labor Department. We have from time to time had occasion to note that there doesn't seem to be any absence of concern for the problems of employers in the Labor Department.

The policing job is essentially addressed toward labor requirements, toward labor standards, which are inherently I think an area that the Department of Labor should be more proficient in, for which they have in the past been given the responsibility; and it seems to me that it would only introduce a note of added complexity in a field which is already overburdened with some complexity by dividing those authorities, creating added internal conflicts and divisions that I think would not serve the purposes that are sought.

Senator SIMPSON. Do you have any problem with what I feel with regards to this, as I know you are sensitive to the issue as you travel the country with your membership and tending that membership, and I know you will share with me, as with your capable staff—how willing we are to provide that quick, almost immediate response which is dependent upon nothing but meteorological conditions and climate and air and water and the dam; here is this crop. And it would be nice to have been able to go through the 80 days and the 20 days or the 10 and there is eligibility and so on, but then when it comes, they have been burned a couple of times so they just say, well, you know, I've done that or tried that and it didn't work, so I know what I can do, and that's just hire the illegal, undocumented alien. How do we deal with that? I'd like to separate that issue from whether they pay them less or exploit them, which I think does happen, I agree with you. But how do we separate that so that we can provide something for all of us, which is our food supply?

Mr. KIRKLAND. Well, I don't think particularly today there is any looming shortage of labor in any of those areas. If it is a matter of inadequacies of recruitment or canvassing or—I think that could be addressed on its own as an issue, and we suggest that this question be examined jointly. We are prepared to cooperate and we would love to have some nice lists of those jobs in some of the unemployment centers where our members are. People come to us, and come to our soup kitchens and grocery banks, food banks, and say they're willing to do anything. I think we could provide some of those workers.

Senator SIMPSON. Well, that is what we will be seeing if we can work with you on it.

Now, I am going to ask you the final question I've asked everybody, in the last 4 days of hearings. Are you ready for this last question?

How do you see things in this country if we do absolutely nothing in regards to immigration or immigration reform?

Mr. KIRKLAND. I see extraordinarily nasty social and economic tensions developing in this country; that is, tensions of the worst kind, not between the haves and the have nots as such, but between the have nots and the have lesses. That's the most destructive ruinous competition and tension, and the most explosive. And I think for the sake of the country, for the sake of the values that we profess to stand for, there are very few items that ought to have higher priority than addressing this in a fair and decent manner.

Senator SIMPSON. Well, certainly that response has been a similar one and the most extraordinary part of it is what do we do, what happens if we do nothing? And you said it in a very precise way.

I want to thank you again and I look forward to working with you in the subcommittee and the full committee and when and if we get it to the floor. Thank you so much.

Mr. KIRKLAND. Thank you.

Senator SIMPSON. I believe that will conclude the hearing.

[The subcommittee adjourned at 11:43 a.m.]

[The following was received for the record:]

Statement by the AFL-CIO Executive Council
on
Immigration

February 24, 1983
Bal Harbour, Fla.

The AFL-CIO reaffirms its support for an immigration policy that is consistent with the nation's compassionate and humane traditions and that safeguards the welfare of American citizens and American workers.

We urge action by the 98th Congress on immigration legislation that achieves these goals. Such legislation should prevent wholesale illegal immigration but should also legalize the status of those aliens who, though their presence in the country is not authorized, have become settled, contributing members of their communities. We support the most generous, practical amnesty for these people.

Most undocumented workers come to the United States to seek jobs and are vulnerable to exploitation by unscrupulous employers because of their fear of deportation. Unable to protect themselves or to call upon government to enforce federal law on fair wages and working standards, such workers undermine the rights, the job opportunities and the working conditions of others.

The single most important deterrent to illegal immigration would be a legislative prohibition on the employment of undocumented workers. This must be accompanied by an efficient enforcement system providing for sanctions of sufficient severity against employers of undocumented workers -- including injunctions -- to deter violators, and for private legal action where the government fails to act.

Essential to workable and fair sanctions against employers is a system for verification of the identity of job applicants that will demonstrate the individual's legal entitlement to work and that is secure and forgery-proof. The legislation we seek must enable employers to ascertain in simple fashion the eligibility for employment of those they hire, and it must ensure that employers cannot use these sanctions as an excuse not to hire legal resident aliens or citizens who "look foreign."

The AFL-CIO supports a compassionate program for the legalization of undocumented workers and their families now within the U.S. Such a program must be accompanied by the adoption of a program of effective prohibition on the hiring of undocumented workers and by the appropriation of sufficient moneys to strengthen border control and interior enforcement of the immigration laws.

The AFL-CIO continues to oppose any program which would permit importing of foreign labor to undercut U.S. wages and working conditions. "Guestworker" or "bracero" programs are contrary to the interests of American workers, whatever label may be given them. We continue to support the recommendations of the Select Commission on Immigration and Refugee Policy that the government, employers and unions should cooperate to end dependence of any industry on a constant supply of temporary foreign workers, to remove current disincentives to hiring U.S. workers, and to maintain labor certification by the U.S. Department of Labor.

Any new immigration legislation must maintain and increase the authority and responsibility of the Secretary of Labor to determine in advance that admission of foreign workers will not adversely affect job opportunities, wages, hours, or other conditions of employment for U.S. workers. The AFL-CIO will continue to press these and other labor protections along lines endorsed in 1982 by the House Education and Labor Committee.

Three immigration programs under present law have an adverse impact on American workers: H-1 visas, intended for persons of distinguished merit and ability coming to perform work requiring those qualities; H-2 visas, for persons coming to perform temporary work for which qualified American workers are not available; and B-1 visas, for business visitors. All three have been used improperly by agencies administering the visa program to admit non-immigrant aliens who do not meet the specified requirements.

The AFL-CIO urges the Congress to enact new legislation to adequately protect against unfair competition for jobs from undocumented workers. The Departments of State, Justice, and Labor should better enforce programs relating to the admission of non-immigrant alien workers into the United States.

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APPENDIX

PREPARED STATEMENT OF HON. J. J. PICKLE
A U.S. REPRESENTATIVE FROM TEXAS

MR. CHAIRMAN: I am pleased that you have chosen to attempt reform of our immigration laws again this session, and am honored to submit a statement in support of your effort, for the Committee record. I was present on the House floor during the waning hours of the lame-duck session last year, and witnessed and shared the frustration of those seeking to address this very difficult issue in a fair and equitable manner.

Illegal immigration impacts the very social fabric of our lives, and is directly related to the health and vitality of our political and economic systems. We must not lose sight, however, of the human dimension of this problem. I wish to remind Members of the special interests of a group which has never supported any of us in an election; never given any of us money; and which will certainly never cast a single vote for me, nor most of the distinguished Members of this body. I refer, MR. CHAIRMAN, to that group of people we call "illegal aliens".

I won't argue that they did the legal thing, or even the right thing, when they sought out our country. What they did, however, was the human thing; a migration we cannot undo any more than we can turn back the clock or stave off the tides. They are here now, and so the question is not whether we approve of their coming, but what we will make of their presence.

With this bill we can at least lift them out of a disgraceful subclass. We can give them dignity and the precious rights of a great Constitution. The alternative is to do nothing, and the price of that is simply too high. We simply must have an immigration policy - a realistic policy to live by in the future. We need an immigration policy which exhibits compassion, common-sense, and firmness... and the time to act is now.

I commend the distinguished Chairman, MR. SIMPSON, for having the courage to bring this issue forward. It is not a perfect bill, but the intent of the bill is good - and can be made workable.

Liza Cheuk May Chan M.A.J.D.
Attorney and Counsellor at Law

919 North Main Street, Apt. 8
Clawson, Michigan 48017

February 23, 1983

VIA FEDERAL EXPRESS

Senate Subcommittee on Immigration
and Refugee Policy
Committee On The Judiciary
United States Senate
Washington, D.C. 20510

Re: S.529 (The Immigration Reform And Control Act of 1983)
Subcommittee Public Hearings: February 24-28, 1983

Dear Senators:

Unfortunately, I could not be scheduled to testify at the three-day public hearings on the above bill due to the large number of requests already received by the Subcommittee. However, I wish to submit for the Subcommittee's--and the full Committee's and the Senate's--consideration my following comments regarding the bill.

I became aware of the legislative efforts to reform our immigration laws shortly after the Senate passed S.2222 last August, and was subsequently very active in expressing my views during and after the House Judiciary Committee markup on H.R.6514. If, as Senator Simpson stated in introducing S.529 on February 17, 1983, this bill is the "same bill...that the Senate passed last August," then S.529 does not contain a provision that I consider of vital importance and which was in fact adopted by the House Judiciary Committee last September and which, I believe, is in the House version of the pending bill (H.R.1510).

Section 302 of last year's H.R.6514/7357 proposed to update to January 1, 1973, the "registry date" contained in section 249 of our present Immigration and Nationality Act, being 8 USC 1259. I strongly urge the Senate to include a similar provision in S.529 for the following reasons.

In introducing S.529, Senator Simpson eloquently articulated some of the major concerns which necessitated the present legislative effort. Notably, in recognizing the increasingly high number of legal and illegal immigrants entering our country every year, he observed that "only a small fraction of them are individually admitted for qualities which are likely to benefit the Nation as a whole..."

Moreover, he was also concerned that "a substantial portion of these new persons and their descendants do not integrate fully into society, [and] may well create in America some of the same social, political, and economic problems which exist in the countries from which they have chosen to depart." However, he added that it was his "deep personal belief that no individual applying to this country lawfully in search of freedom and opportunity and desiring to integrate fully into American society should be discriminated against..." (Congressional Record--Senate, Feb. 17, 1983, S1343)(emphasis added).

The Subcommittee should be aware of the fact that there is a relatively small number of us (longtime legal nonimmigrant aliens) who: (1) were admitted, though as nonimmigrants, for qualities that are likely to and in fact do benefit this country; (2) were desirous of fully integrating into the American society and of contributing to the well-being and advancement of the American society; and (3) are in fact fully and happily integrated into the American society and making substantial and valuable contributions to this country, not so incidentally as a result of their lawful longtime continuous residence. Many of these legal nonimmigrant aliens are distinguished members of the professions or are otherwise well established in their communities.

I am speaking of those legal nonimmigrant aliens, including myself, who have continuously resided in this country for over ten years (say, since January 1, 1973), and who cannot adjust their nonimmigrant status to that of permanent residents because of the huge backlog of immigrant visa applications from their respective countries of birth (i.e., the "current unavailability of immigrant visas"). For these nonimmigrants to apply for an adjustment, they have to leave their homes here in the States for a substantial number of years until immigrant visas are available for their re-entry as immigrants. Such serious disruption of one's livelihood established in the States is hardly a viable alternative, if it is at all available.

As an example, I have been residing continuously in this country for 10-1/2 years, first as a foreign student and then as an "H-1" professional. My country of birth is Hong Kong, and the Preferences that I may be qualified for receiving an immigrant visa are, as of March 1983, backlogged to October 22, 1972 (Third Preference), and to September 21, 1978 (Sixth Preference). I attended American colleges and universities, and have received B.A., M.A., and J.D. degrees. Moreover, I have been a member in good standing of the State Bar of Michigan and have been licensed to practice law in Michigan for over two years. However, quite ironically, I cannot even gain U.S. permanent resident status without a very drastic disruption of my career and livelihood as outlined above.

By updating the registry date to, for instance, January 1, 1973, longtime nonimmigrants such as myself may apply, under a program already established and proven successful by 8 USC 1259, for permanent resident status, and at the discretion of the Attorney General in accordance with express statutory guidelines, be granted permanent resident status.

I would note that the number of aliens thus "grandfathered in" will not be at all significant as compared with our present level of legal and illegal immigration (see, e.g., "Additional Views of Congressman Thomas N. Kindness On Legalization," H.R.Report, 97-890, Part 1, 97th Cong., 2d sess., pp. 212-13). Furthermore, most of the aliens that could benefit from such a provision are likely to have been gainfully employed or are otherwise established financially to have been able to sustain such a lengthy continuous residence. Thus, any adverse impact of such a provision upon our job market is minimal or non-existent.

If there are compelling reasons for the proposed legalization program (and there are at least three, as presented by Senator Simpson on February 17, 1983), there are even more compelling and humanitarian reasons to grant relief--and permanent resident status--to the longtime nonimmigrant aliens that I described above, who are contributing, law abiding, fully assimilated members of our society, as we begin to overhaul our immigration laws and policies.

Therefore, I strongly urge the Subcommittee, the Committee and the Senate to include in S.529 and enact a provision to update 8 USC 1259 (the "registry date" provision). If I may be of further assistance to the Subcommittee, please do not hesitate to contact me at my address above or by telephone at: (313) 356-7100 (office) or at: (313) 280-0786 (residence).

Thank you for your kind consideration of my comments in this regard.

Very truly yours,

Liza Cheuk May Chan

LCMC/jc
cc: The Honorable Strom Thurmond
The Honorable Alan K. Simpson
The Honorable Charles M. Mathias, Jr.
The Honorable Howell Heflin
The Honorable Carl Levin
The Honorable Donald W. Riegle, Jr.
The Honorable Edward M. Kennedy

STATEMENT

OF

JOHN A. SVAHN

COMMISSIONER OF SOCIAL SECURITY

As the Attorney General reemphasized in his statement, the administration is explicitly opposed to the creation of a national identity card. We also recognize the need for a means of compliance with a system of employer sanctions that would allow an employer to identify persons who are authorized to work in the United States. However, the administration has declined to propose a new identification system on grounds of cost and privacy concerns. No wholly secure system is available at this time and all proposals offer distinct disadvantages.

This is particularly true with regard to proposals to make the Social Security card and number more secure and the basis for a national work authorization card.

Problems with Making the Social Security Card Secure

With regard to the considerations that would be involved with any effort to make the Social Security number and card a "secure" identifier, there are several key points:

- First, there is no such thing as a totally noncounterfeitable card. That is, there is no card which can be made absolutely secure if the incentives for counterfeiting are great enough.

- Second, even if an absolutely secure card could be developed, its validity as an identification document would depend upon the validity of the documents a person presents as proofs of identity when the card is issued. Currently, most such documents--birth certificates, immigration documents, driver's licenses, etc.--are very easy to alter or counterfeit. Thus, trying to create a new secure national identification document on existing proofs of identity would be like building the proverbial house upon the sand.

- Third, for the Social Security card or any other card to be a reliable personal identification document, it must be possible to reliably establish that the card belongs to the person presenting it. The current Social Security card contains only a name, a Social Security number, and a space for the person to sign the card if he or she wishes. Changing the card by adding a photograph and requiring that it be signed when issued are not very effective positive identifiers because people can modify their appearance, and signatures can be reproduced with practice. In addition, pictures and signatures on the card would require updating from time to time because appearances and signatures change considerably over a lifetime. More effective identifiers, such as fingerprints, require verification techniques that are expensive and that cannot be applied by nonexperts.

To be effective, a system aimed at creating a secure Social Security card would require that a new card be issued as quickly as possible to everyone in the country. Total reissuance would be necessary because as long as two types of Social Security cards were in existence the old card would have to be accepted for the foreseeable future as legitimate any time people said they had not yet been issued the new card. Also, about 90 percent of current Social Security cards were issued based only on the applicant's allegation as to identity--the current tighter evidentiary requirements for card applicants were not fully in effect until 1978. The process of verifying identities and reissuing everyone a new card would be both very costly--roughly a billion dollars--and burdensome on the public.

Another consideration regarding a "secure" card system is that, in addition to the Federal Government's costs, the verification process for issuing the card would have a severe impact on State and local custodians of the records needed to verify age, identity, and citizenship or alien status. There would be a very large number of requests for the evidence in these records. This would result in delays in people being able to get the documentary evidence that would have to be presented to be issued the new card--and possibly in delays in filling normal requests for vital records such as original birth certificates.

Use of the Social Security Card and Number as an Identity Document

In addition to these practical problems with the idea of trying to make the Social Security card and number a secure identifier, the Social Security Administration also is concerned about the possibility of the Social Security number and card becoming a universal identifier for U.S. citizens. This concern centers around questions of individual privacy. In this age of computers and automated data banks, the creation of a secure identification system, coupled with a common universal identification number, could lead to the combination of information on an individual from various governmental and private data files.

* * * *

Aside from this privacy concern, any effort to revise the Social Security card to make it a truly "secure" identification document may ultimately be ineffective because, as noted earlier, the card can only be as reliable as the documents on which it is based. Thus, we think that the administration's suggestion to rely on a number of existing documents and see if improvements need to be made, rather than to require creation of one national identification document, is the most effective and prudent approach. The Social Security Administration is committed, however, to further improving the integrity of the Social Security card and number issuance process and will work with the Department of Justice to assure proper use of the Social Security card if it is part of the employer sanctions system.

Statement of the American Electronics Association
Before the
Subcommittee on Immigration and Refugee Policy
Committee on the Judiciary
United States Senate

March 1983

This testimony is submitted for the record by the American Electronics Association (AEA). AEA represents over 2,000 growing high technology companies in 43 states. The association's membership encompasses all segments of the U.S. electronics industries, including manufacturers and suppliers of computers and peripherals, telecommunications equipment, defense systems and products, instruments, semiconductors and other components, software, research, and office systems. A majority of AEA's member companies employ fewer than 500 employees. AEA's fundamental purpose is to provide a healthy business environment for our industry, including such characteristics as an adequate pool of qualified technical people.

OUR CONCERNS

AEA is primarily concerned with two provisions in S.529, both of which relate to legal immigration. These provisions are found in sections 212 regarding students and 202 regarding preference systems. Our concerns are summarized in enclosure 1, "Problems Related to S.529." Both sections will interfere significantly with industry's ability to solve the shortage of trained technical manpower. They will make it more difficult for U.S. industry to make use of the technical skills and knowledge of alien students who are trained in U.S. universities and, additionally, will make it more difficult for U.S. industry to bring in trained technical talent from outside the U.S. when there is no one with the necessary training available in the U.S. Enclosure 2 presents an analysis prepared by an immigration attorney.

SUMMARY OF TESTIMONY

A shortage of electrical/electronic (EE) and computer (CE) engineers exists today that inhibits our industry's ability to grow and compete on the world market. We are currently dependent on our ability to hire immigrants, primarily students graduating from U.S. universities, in order to compensate partially for the total shortage. If this source of talent is removed from us before an adequate supply of trained U.S. citizens becomes available then there will be serious negative repercussions on our industry, our economy, and our national defense without any material offsetting benefits to the U.S. Engineers create products that lead to jobs for non-engineers. Restricting our ability to hire engineers in the U.S. will lead to lower relative employment in the U.S. far exceeding the number of engineers being debated. The long-term solution must come by increasing the supply of U.S. citizen engineering graduates, not by restricting immigrants. This cannot happen unless U.S. universities get significantly more resources for their engineering departments. AEA and its individual members have an active program to support our universities to the tune of tens of millions of dollars annually. AEA's program was initiated one year ago and has been growing rapidly. Congress can be most helpful by directing its efforts toward support of this and other programs prior to any plans to close the safety valve of legal immigration.

THE PROBLEM

Electronics has become an intrinsic part of the American way of life--from the watches we wear, to the automobiles we drive, to a new generation of conventional weaponry and armaments which gives us that "critical technological edge" that helps maintain our national security and the balance of world power. As a result, the electronics industry experienced a phenomenal annual growth rate of 17% during the 1970s. By 1979, high technology companies accounted for 75% of the net increase in manufacturing jobs from 1955 to 1979. By 1981, information technology accounted for 46% of the GNP.

The Scientific Manpower Commission reports that science and engineering employment in the industrial sector increased 9% per year between 1979 and 1981, up from 8% during 1977-79 and from 7% during 1973-1977.

An October 1982 report by the Business-Higher Education Forum, a group of nearly 80 company and university top executives, indicates that the demand for new qualified engineers is expected to continue to increase substantially through 1990. This high demand appears to be driven by the following trends: the continuing development and rearmament of the U.S. defense establishment, the continuing need for more effective use of limited energy and material resources, the expanding direct-service roles of engineering consultants in both traditional and new fields, the continuing expansion of technologically-based governmental programs and activities, the increasing penetration of new technology into all industrial and service activities, and a broad advance in the rigor and level of most engineering functions. Thus, this demand is generated by a diversity of trends and is not a single-dimension demand dependent on one objective and one consumer, as has been the case in the past.

In fact, the Bureau of Labor Statistics projects that U.S. employment of electrical engineers will grow from nearly 300,000 in 1978 to about 450,000 by 1990. Ironically, the very success of the electronics industry has created one of our most serious problems: a need for technical people that outpaces the supply.

Despite the growing demand, the number of new engineers produced by U.S. universities has not kept pace. A flurry of applicants to engineering schools in recent years has resulted in entrance standards being raised to the point where sometimes only straight A students are admitted. Following a brief period of admitting much larger student bodies, engineering schools have started to cap and even cut back on enrollments due to lack of faculty, equipment, and facilities.

Just last week, Dr. George E. Pake, Xerox Research Center group vice president, was quoted in Electronic News: "The shortage of trained people bids up industrial salaries at a time when university resources have been seriously eroded by inflation. Our universities produce only about 200 computer science Ph.Ds annually--about the number just one major corporation recently stated it needs to hire each year."

Until universities get more resources, they will not be able to increase the supply of engineers significantly.

The competition for technical people that has resulted from the phenomenal growth of the industry has resulted in rapid salary increases for engineers. AEA's annual salary survey indicates that the average salary for non-supervisory degreed engineers was $23,544 as of January 1982 for engineers one year out of school compared with $14,136 five years earlier--an increase of 66%. This is 10% greater than the rate of inflation over the same period according to the Economic Report of the President, February 1983. The same report noted that median male employees' wages grew 6.5% less than inflation. Thus engineers' salaries grew 16.5% more than the median salary growth.

Another survey, by the College Placement Council, resulted in slightly different numbers, but the same conclusion. In their CPC Salary Survey: A Study of 1981-82 Beginning Offers, Formal Report No. 2 (Bethlehem, PA, March 1982), CPC reported beginning salaries for B.S.-degreed engineers in spring 1982 ranged from $23,000 to over $32,000. This survey also showed that B.S.-engineering candidates received about 60% of all job offers extended to baccalaureate candidates in the spring of 1982. This evidence of higher demand for engineers compared to other disciplines helps to validate the perspective that shortages in certain engineering fields exist.

Looked at from the international perspective, the U.S. clearly lags in the quantity of engineering graduates. For every one million population, the Soviet Union graduates 260 electrical engineers each year, Japan graduates 163, and the U.S. graduates 67. For every 10,000 population, 70 in the U.S. and 400 in Japan are engineers. According to the 1980 Presidential Report on Engineering and Science Education, the U.S. lags fourth in scientific literacy behind the Soviet Union, West Germany, and Japan. Engineering accounts for only 6% of the total undergraduate degrees awarded in the U.S., but 21% of those awarded in Japan, 35% of those awarded in the Soviet Union, and 37% of those awarded in West Germany.

This is occurring at a time when competition from abroad is increasing at a rate that is alarming. In the last few years for example, the Japanese have captured up to 70% of the U.S. market in one of the most important computer memory parts known as the 64K RAM. A few years ago their share of the dynamic RAM market in the U.S. was insignificant. The competition is weighted on the side of the countries with the technical human resources to develop new technologies and to produce quality products to meet market demand. Clearly, other countries are rapidly surpassing the U.S. in developing these human resources.

One can only reach the conclusion that Stephen Kahne, Director, Division of Electrical, Computer and Systems Engineering, National Science Foundation, did when he said in IEEE's Spectrum (June 1981, p. 50), "It is no longer an open question of whether the shortage of electrical engineers in the U.S. is, or is not, a crisis. It is. Sooner or later every sector of the economy depending upon electrical engineering will be affected."

We in the industry have been forced to hire immigrants in order to grow (see enclosure 3). At Intel Corp., for example, foreign engineers make up 50% of the M.S. degree graduates and 66% of the Ph.D. graduates hired through the U.S. university system. At Measurex Corp., immigrants equal 33% of the R&D staff. At Rolm Corp., 20% of their new college hires with engineering degrees are non-U.S. citizens. Rolm typically hires 10-20% fewer engineers than they need and always has openings for experienced engineers which they are unable to fill because of the lack of qualified people.

In addition, the employment of recent immigrants has been critical to the success of our businesses. For example, Intel Corp.'s most notable inventors include engineers from Italy, Japan, France, Israel, and Hong Kong. Even Intel's president is an immigrant to the U.S.

Just six days ago, on March 4, in a speech before the Commonwealth Club in San Francisco, President Reagan praised Daisy Systems Corporation as a company "with the burning commitment we need to make our country great." Mr. Aryeh Finegold, founder and president of Daisy Systems, which now provides work for approximately 150 other workers (100 more than one year ago) entered the U.S. on an H-1 visa in 1979 to work for Intel. Had the immigration restrictions under consideration now been in effect at that time, Mr. Finegold would probably not have been admitted to the U.S. at all.

The problem is absolutely one of a shortage and not one of lower-cost labor. The Electronic Engineering Times Salary Survey (April 26, 1982) reports that foreign-born EEs' salaries tend to cluster slightly more around both the low and the high ends of the salary scale. The competition for engineers is such that the system doesn't allow for cheap hires. There is adequate evidence that engineers' salaries have not been depressed by the hiring of foreign engineers. (See enclosure 4.) Silicon Valley is well known for the high turnover between firms competing for engineering talent. Residents of Silicon Valley are bombarded by billboards, radio, and TV ads of companies seeking engineers for employment, even in the depth of the recession. Both defense and non defense companies offer bounties of $500 to $2,000 to employees who recruit a new engineer for the firm.

The shortage is so severe that Intel has already opened design facilities in Israel, France, and Japan simply due to the availability of highly skilled technical talent. Experience has shown that costs of operating an R&D facility in these developed countries are no lower than for operating a similar facility in the U.S., but these other countries do have a better supply of engineers. Other companies that have established research and development centers in Israel due to the availability of technical talent include AVX Corp., Control Data, Motorola, and National Semiconductor.

CONSEQUENCES OF FURTHER RESTRICTING THE HIRING OF IMMIGRANT ENGINEERS

Enclosure 5 to this testimony is a memo from Mr. Eric Brooker, Vice President of Engineering at Andrew Corporation in Illinois. Mr. Brooker, an emigre from Australia, describes a rule applied in Australia for two decades following World War II which was similar to that proposed in section 212 of S.529. It required foreign students trained in Australian universities to return home for at least two years after graduation, as does section 212. This not only deprived Australia of individuals who could have made excellent contributions to Australian technology but also resulted in considerable ill-will directed at Australia. In addition, and more importantly, the best of these graduates did not return to their home countries but rather took positions in other technology-rich countries where opportunities were greater and where they were in direct competition with Australia. If the U.S. is concerned about exporting technology to our competitors, we must consider the realities of forcing U.S.-trained persons to leave this country.

The first consequence will be the exportation of non-engineering jobs out of the U.S. via one of two routes. Either U.S. firms will accelerate the relocation of facilities overseas, where the engineers are, in order to develop and produce competitive technical products or they will simply lose ground competitively to foreign firms. In either case, U.S. employment will suffer to a much larger extent than the number of engineers in question. At Intel, there are five non-technical jobs for every engineer employed. In the economy as a whole, 27 jobs depend on each engineer. The growth in employment that everyone is hopeful will come from high-tech to compensate for cutbacks in "smokestack" America will be "cut off at the knees" if engineering talent is unnecessarily restricted. Engineers create jobs for other Americans rather than taking them away.

Small companies may suffer even more from the lack of technical manpower. Small new companies are at a disadvantage compared to large ones in providing attractive benefits to attract top engineers, and they do not have the capability to conduct extensive in-house training programs. Yet they create new jobs much faster than mature companies. A 1977 AEA survey indicated that although mature companies had an average of 27 times more employees than young companies, those young companies created an average of

89 new jobs per company versus an average of only 69 new jobs per mature company during the preceeding year.

Those individual engineers who would favor tighter legal immigration controls are likely not considering the impact on U.S. citizens who will benefit from job growth that comes when companies have the technical talent to grow and expand.

The second consequence of tighter legislation is that it could negatively impact productivity. Enclosure 6 shows the relationship between the percentage of engineers produced (and presumably retained) by a nation and the growth of productivity experienced by the nation. There is a clear direct relationship between percent of engineers and percent rise in productivity. Expelling foreign engineering graduates from the U.S. lowers the number available for employment, thus likely having some adverse effect on U.S. productivity.

The third negative outcome may be a weaker defense capability. In addition to the overall loss of competitive economic strength versus other nations, U.S. defense programs, lacking needed technical talent to design, produce, and service defense arms and weaponry may be delayed and become more expensive.

Air Force Systems Command in November 1981 included about 12,000 scientists and engineers. According to General Robert T. Marsh, Commander, Air Force Systems Command, it was operating with about 700 fewer engineers than authorized. He was quoted in the October 26, 1981, Electronic News as saying that the Air Force was short 1100 engineers to meet minimum needs.

While the armed forces and the defense industry do not typically hire non-U.S. citizens, increased competition for a smaller pool of engineers will be reflected in the defense area. In addition, the Department of Defense is increasingly concerned about the export of technology. What better way to aggravate the problem than forcing engineers trained in leading edge technologies to leave the U.S.

The fourth problem will be a further roadblock in our universities' efforts to hire professors in the engineering schools to increase U.S. citizen graduates. In fact, without the supply of well-qualified and highly motivated foreign students and teachers, few engineering colleges could have sustained their research programs and faculty commitments over the past several years.

Dr. Ken Haughton, Dean of Engineering at the University of Santa Clara in the Silicon Valley, notes that in a recent attempt to fill an electrical engineering professorship position, 21 of the 24 applicants were foreign. "Foreign people are a large fraction of engineering faculty in this country. I'd like to have U.S. citizens, but since I can't get them I rely on foreign faculty," says Haughton.

What tighter immigration restrictions will not do is increase the number of U.S. engineers. In fact, it is even unlikely that the kinds of immigrant engineers needed in the U.S. will return to underdeveloped countries. As Mr. Brooker pointed out, Australia's experience was that they went to other developed countries. Frank Williams of Hewlett-Packard Company stated it another way when he said, "If this bill (S.529) passes unamended, the net effect is we'll be training engineers for our foreign competitors. I don't think that's really the intent of Congress. We already have a difficult time getting well-qualified, state-of-the-art engineers regardless of nationality. If we can't hire foreign graduates, I'm sure our foreign competitors will be delighted to hire them."

CAUSES OF THE SHORTAGE OF ENGINEERS

The problem lies not in a lack of interested students but in a lack of faculty members to teach them. Nationally there are an estimated 1,600 to 2,000 engineering faculty vacancies, over half of which have been unfilled for more than one year. This represents about 10% of the total authorized engineering faculty positions. The vacancy rate approaches 50% in some fields such as solid state electronics, computer engineering, and digital systems.

Unfortunately, the trend is in the wrong direction. While the number of B.S. engineering degrees (i.e., the workload for professors) increased almost 50% over the past decade and the undergraduate enrollment doubled (according to Engineering Research Council data), Ph.Ds granted in engineering (the source of new faculty) decreased by nearly 25%. And increasingly more of these Ph.Ds have been granted to foreign students due to a lack of U.S. citizen interest in continuing on for a Ph.D. In electrical engineering B.S. degrees increased 14% between 1970 and 1980, while the number of M.S. degrees granted declined 10% and the number of Ph.Ds declined 40%.

A survey conducted during 1982 by the American Association of Engineering Societies found that the average salary (not starting salary) for engineering assistant professors as of September 1981 was $24,100. Compare this with the average salaries at that time for new B.S. engineers in industry, which ranged from $22,473 for new civil engineers to $30,432 starting salary offers for petroleum engineers. Consider that obtaining a Ph.D. degree to go into teaching requires at least four more years of study, at a cost of up to $20,000 per year for living costs and tuition at a private school. It is then understandable that little incentive exists for U.S. citizens to obtain a Ph.D. to teach. As a result of this lack of interest, graduate engineering programs have filled empty slots with interested foreign engineering students, to the point that about one-half of the Ph.Ds awarded in electrical engineering last year went to foreign students. The increases in foreign student enrollments at the graduate level have not caused U.S. graduate students to be displaced or denied admission. The problem is that too few U.S. nationals choose to continue study at the doctoral level.

Engineers who do go on to get a doctorate are then faced with the choice of taking a teaching job at about $24,000 per year (often less) or taking a job in industry at about $33,500 to $35,000, the average starting salary for Ph.Ds. As a result, fewer of the declining number of Ph.Ds are choosing to teach. For example, ten years ago an estimated 50% of new Stanford engineering Ph.D. graduates chose to teach, but last year only 24% did so.

As stated by James Botkin, Dan Dimancescu, and Ray Stata in "High Technology, Higher Education, and High Anxiety" (Technology Review, October 1982):

> Market forces are polarizing salaries to such an extent that the option to become a professor is now looking more and more like a financial chastity vow. And the fewer faculty there are, the more onerous is the workload for those that remain. Since student-to-faculty ratios are increasing, the average engineering faculty member has a teaching burden 40% greater than ten years ago.

These same authors point out that the cost of filling 1,600 vacant faculty positions at an average salary of $25,000 and giving the entire national engineering faculty a 30% raise to make academic salaries more competitive with industry would total about the same amount ($190 million) as six and one-half hours of expenditures by the Department of Defense.

But salaries are not the sole culprit in luring engineers from teaching jobs to industry. As referred to above, the increased teaching burdens resulting from the faculty shortage have made teaching a less attractive career, as has the lack of up-to-date equipment and facilities. Inadequate and outdated laboratory equipment and facilities make it impossible to prepare students for state-of-the-art technology. Latest estimates to modernize U.S. engineering colleges range from $500 million to over $1 billion. The inability to provide sufficient equipment for undergraduate laboratories limits the number of students that may be served, and the increasing obsolescence of the existing equipment detracts from the quality of the education provided.

As a result of these problems, the quality of engineering education is deteriorating. The Accreditation Board of Engineering and Technology (ABET) reports that from 1980 to 1981, 31% fewer engineering programs received the full 6-year accreditation, and 71% more were noted as "needing improvement." Engineering college enrollments have doubled in ten years without a corresponding increase in either faculty or equipment. This has resulted in a cutback of course offerings by 54% of U.S. engineering institutions. The increase in undergraduate students has strained the capacity of university resources. Faculty shortages have forced more than 20 major universities to cap or cut back engineering enrollments.

The National Engineering Action Conference (NEAC), a joint conference of education, industry, government, and the engineering profession held in 1982, summarized the present status of engineering education as follows:

> The state of engineering education in the United States is deteriorating severely.
>
> ...with undergraduate engineering enrollments at all-time highs, at least 1,600 engineering faculty positions stand empty. Further, only a fraction of the candidates necessary to fill such positions are actually pursuing advanced degrees; an even smaller fraction are choosing academic careers. If not addressed, the faculty shortage will inevitably bring a sharp deterioration in the quality of engineering education, with serious consequences for the nation's key industries and defense in a competitive, dangerous world.
>
> We urge that all concerned focus their efforts on these two chief objectives:
>
> 1. To fill, with qualified personnel, the engineering faculty vacancies, and
> 2. To make engineering faculty careers more attractive by enhancing the academic environment.

WHAT INDUSTRY IS DOING

In recognition of this problem, industry has taken steps to begin to counteract it. AEA's Board of Directors has set a goal for each of our member companies to invest 2% of R&D expenditures in engineering education in cash or cash equivalents. AEA has established the Electronics Education Foundation to encourage and aid contributions to engineering education by our member companies. The Foundation's goal is to raise 300 faculty development grants of approximately $10,000 each to help universities recruit and retain faculty, and 200 graduate student grants at an average of $15,000 per year for four years per grant to U.S. citizens who plan to pursue a teaching career in electrical, electronic, or computer engineering. In addition, member companies are encouraged to donate state-of-the-art equipment to engineering schools, which simply do not have the funds to keep their equipment up to date. Enclosures 7 through 10 further describe the Foundation program, and enclosure 11 outlines an AEA publication describing numerous joint industry-university programs for the purpose of encouraging replication.

Hewlett-Packard Co. is vanguarding AEA's Faculty Development Program by committing funds for 50 graduate fellowship-loans for U.S. citizens over the next eight years at a cost of $6 million. Control Data in cooperation with AEA's Foundation recently announced a $6 million contribution of microcomputers and lower division engineering courseware to some 100 engineering colleges and universities.

AEA has also organized committees composed of industry executives around the country to develop action plans to address the problem on a regional or state basis, raising $10 million dollars for 1983.

The National Science Foundation estimates that industry spending on universities has increased almost fourfold during the past decade, with an estimated $275 million going to academic laboratories in 1982. Enclosure 12 describes the efforts of some companies and organizations to assist U.S. universities. A few examples include:

o In 1982 Intel donated $9.4 million worth of products, equipment, services, or cash to universities;

o In 1982 IBM funded more than 90 fellowships in engineering, computer science, and information systems, and awarded over $750,000 in grants to departments of engineering and computer science, and it has announced it will donate $50 million to the five schools that come up with the best proposals for manufacturing engineering programs;

o General Electric Co. has increased to $10 million the money it gives annually to higher education;

o American Telephone & Telegraph Co. will award 25 four-year fellowships each year to promising science students, for an annual cost of $2 million;

o Hughes Aircraft Co. provides about $8 million a year support to colleges and universities through various programs;

o Loral Corp. has contributed $165,000 for a microwave laboratory at City College of New York;

- Motorola has given $1.2 million to Arizona State's College of Engineering and Applied Sciences to support its Center of Engineering Excellence;
- Analog Devices, Inc. has contributed $175,000 to Massachusetts' University of Lowell to fund a new engineering professorship;
- 3M Co. has given $1.2 million to two research centers at the University of Minnesota's Institute of Technology;
- National Semiconductor has donated equipment valued at $376,000 to Rochester Institute of Technology for its micro-electronics program, in addition to its regular assistance to 12 other engineering schools nationally.

SOME MISCONCEPTIONS

One of the most common arguments to counter predicted "shortfalls" of engineers is the argument that engineering employment is cyclical. To some extent, of course, this is true of any type of employment. Witness, for example the downward trend in all areas of employment that accompanies an economic downturn such as our recent one. Nevertheless, patterns of engineering employment are relatively stable, fluctuating only moderately in response to shifts in economic, social, and demographic conditions.

Between 1963 and 1979, for example, the unemployment rate for engineers varied between a low of .7% from 1966-68 and a high of 2.9% in 1971. In only four of the years was the rate over 2%. Yet during this same time period, the unemployment rate for all professional groups varied from 2+% to 6%. Clearly, engineering is no more "cyclical" and actually less so than other types of employment. In fact, as pointed out by Daniel C. Drucker, president of the American Society for Engineering Education, "Engineering is just about the only profession or occupation other than medicine in which every graduate who wishes to be employed as a member of the profession can obtain a position, unless the economy is in terrible shape."

A 1981 AEA survey showed a shortfall between supply and demand of some 20,000 electrical/electronic and computer engineers annually through 1985. The state of the current economy has lessened the demand only slightly. The supply has also been limited due to many engineering colleges capping or cutting back enrollments due to too few faculty. It needs to be kept in mind that as the economy starts to improve, the demand for EE/CS engineers will far outpass the supply. Although engineering students account for only 6-to-7% of U.S. graduates, they continue to receive about two-thirds of all job offers from business and industry.

Les Hogan, Director of Fairchild Corporation, points out the importance of our need for human resources--the brainpower that drives the electronics industry:

> "Though there are many important issues worth our collective effort...as I look at the next ten years, I worry about international competition. If we lose the battle in the marketplace, we will lose because we do not have the quantity of trained people necessary to keep leadership in the industry. This is the single most important issue our industry faces--bar none! Other things will slow us down and make it tougher, but we can still win. The lack of qualified technical people, however, means we cannot win."

The drive to limit legal immigration in areas where shortages of U.S. workers exist will only exacerbate a problem that industry, education, and state and federal government are all working to remedy. However, effective solutions require time. New professors cannot be trained, university salaries cannot be made competitive, and colleges without professors cannot graduate the necessary number of engineers overnight.

AEA's position has been endorsed by the Reagan Administration, the Alliance for Immigration Reform, the Business Roundtable, the National Association of Manufacturers, the Semiconductor Industry Association, the American Council on Education, the Association of American Universities, and many other educational associations.

ENCLOSURE 1

PROBLEMS RELATED TO S.529

Sec. 212: STUDENTS

Establishes annual quota in four disciplines (natural science, math, computer science, and engineering) for foreign graduates of U.S. colleges and universities:

- ° 1,500 waivers for faculty jobs
- ° 4,500 waivers for industry jobs
  - (a) research or technical jobs (only those who have immigrant visas)
  - (b) 4 year training positions--required to return home and be a manager (non-immigrant visas)

***Above subject to 450,000 annual quota all preferences and for Ph.Ds or "Aliens of Exceptional Ability" (Effectively eliminates BS and MS degreed students since "Exceptional Ability" has been redefined so that the degree is no longer a basis for such classification.)

° Approximately 2,225 Ph.Ds in 1980-1981 were received by foreign students in U.S. universities in the four specified disciplines. If one out of three graduates remain, only 740 are likely to be available for U.S. employment--some for academia and some for industry. The quota of 1,500 for faculty jobs, therefore, seems sufficient. Since only Ph.Ds will be allowed to remain, however, there will be considerable shortfall to the total quota of 6,000:

6,000 in four disciplines can stay
- 740 Ph.Ds in the four disciplines likely to remain
5,260 too few available

We need MS and BS foreign students to remain as well.

Sec. 202 (a)(1) and 4 (b) (1): PREFERENCE ALLOCATION SYSTEMS

Eliminates the degree as a basis for Second Preference status as "Aliens of Exceptional Ability." This will effect MS and BS students, who will have to be handled on a case-by-case basis with INS; "possibly" letters from professors and exceptional grades may result in such classification. The intent, however, appears to be that only Ph.Ds and others of "national renown" will be allowed to stay after graduation as well as be allowed to enter U.S. under this category.

Sec. 203 (a) (B): LABOR CERTIFICATION

"sufficient workers in the United States could not within a reasonable period of time be trained for such occupations by (or through funds provided by) potential employers;. . ."

Exactly why this was included is still unclear. The potential for regulatory abuse possibility exists.

The amendment does call for a three-year study to be presented to Congress. And it does grandfather existing students, not affecting freshman students who enter today for another three years. The rationale for the study is a "lack of data;" therefore, the specific quotas cannot be soundly data based themselves. The bill appears to run counter to the Administration's expressed position to cut regulations, the quotas resulting in a potential for a "regulatory nightmare."

ENCLOSURE 2

March 1, 1983

Memorandum re technical implications of S.529 on nonimmigrant employees

Sec. 212(b) 1. Adjustment of Status from F-1 status to lawful permanent resident status by means of application through the INS offices in the United States where basis of application is a labor certification.

An alien admitted at any time as an F-1 student could not apply for adjustment of status unless (1) he has received a "waiver" of the two-year foreign residence requirement; or (2) he entered the U.S. prior to the date of enactment of the bill and is qualified to apply for a "waiver" of the two year requirement.

Those not meeting the exceptions noted above would have to apply for an immigrant visa through the offices of a U.S. Consulate or Embassy (as would members of the aliens immediate family) in his home country at a time and date set by such Consulate or Embassy. The time to be spent outside the U.S. could vary from one day to several weeks depending upon several factors. Those aliens who, for one reason or another, cannot return to their own country face the added problem of locating a U.S. Consulate in a third country willing to accept jurisdiction of the application.

Sec. 212(a) 2. Adjustment of status for F-1 students to either permanent resident status or H-1 nonimmigrant status as it applies to F-1 students admitted to the U.S. after the date of enactment.

An alien who enters the U.S. after the date of enactment in F-1 status will not be eligible for any new kind of nonimmigrant work status (e.g. H-1) and will not be eligible to apply for permanent resident status (either through adjustment at an INS office or by application at a U.S. Consulate abroad) until such alien completes two years of foreign country residence.

Waivers of this two year foreign residence requirements can be granted if it is determined that such a waiver would be in the public interest and if:

a) the alien qualifies for the new "first preference" category described in Sec. 202(a)(1) i.e. one who is a member of a profession holding a doctoral degree or one of exceptional ability in the sciences, arts or business who has a degree in a natural science, mathematics, computer science or an engineering field from a college or university in the U.S. and who is offered a research or technical position by a U.S. employer in the field in which he obtained the degree; and provided that no more than 4,500 such waiver each year will be granted; or

b) the alien obtained a degree in a "natural science, computer science or in a field of engineering or business" and is applying for a nonimmigrant H-3 trainee visa to come to the U.S. for training by a U.S. employer where such training is to provide the basis for his return to his home country for employment by a branch of the U.S. employer company in a management capacity.

Prior Immigration Service interpretations of the phrase "exceptional ability in the sciences or arts" as contained in the present law have been very restrictive, often requiring that the alien have national or international recognition accorded him, or be the subject of universal acclaim, or submit evidence that he has been awarded a nationally or internationally recognized prize. Adherence to this type of restrictive interpretation could severely limit the number of aliens eligible for a waiver; limiting it to those with PhD degrees or those who have a degree in a required field and who can meet the test of "exceptional ability". In our opinion, thos with B.S. or M.S. Degrees would encounter very serious problems in terms of qualifying for a waiver of the two year foreign residence requirement.

3. Ability to bring aliens to the U.S. temporarily on H-1 nonimmigrant visas

Under the present law, an employer is able to bring an alien to the United States to work for a temporary period of time by establishing that the alien possesses at least a Bachelor's Degree in a scientific of engineering field and that the position offered requires that level of knowledge. For the most part, aliens entering the United States as H-1 nonimmigrants qualify as "members of the professions".

It is reasonable to predict that the language used in the Senate Bill to describe in Sec. 202(a)(1) "members of the professions holding doctoral degrees (or the equivalent degree) or who because of their exceptional ability in the sciences, arts or business...." will be superimposed on the present definition of an H-1 nonimmigrant. That is, the foregoing language, in attempting to define a very high level of education and/or ability in connection with eligibility for an immigrant visa would most likely become identified by INS as identical to the present standards required for an H-1 nonimmigrant visa.

Unless specific language is incorporated into the text of the bill to prevent such a transfer of meanings, it is assumed that such transfer of meaning will take place in the administration of the bill once enacted into law. This would sharply reduce the number of professional foreign nationals (e.g. those with Bachelors or Masters Degrees) available to a U.S. employer for temporary employment in a professional position.

Specific language is also needed to ensure that an F-1 student can change status within the United States from F-1 to H-1 status and that the waiver provisions apply equally to applications for change of nonimmigrant status as well as to applications for permanent resident visas.

ENCLOSURE 3

B ELECTRONIC NEWS, MONDAY, APRIL 20, 1981

Firms Differ on Getting EEs From Abroad

TEMPE, Ariz. — GTE Microcircuits' embarkment on a program to recruit design engineers from the United Kingdom underscores the lingering problem of the shortage of EEs.

GTE Microcircuits is going overseas for the first time after finding Arizona — previously thought to be an area rich in technical talent — inadequate to fill the operation's needs during an expansionary phase.

Although some components firms have recruited overseas at various times, others have shied away from the prospect of hiring an EE from overseas and paying his expensive relocation costs, only to see him jump to another company after an initial period — typically 1 year.

At GTE, Robert E. Williams, recently named as the Microcircuits division's employment manager in charge of recruiting, said his firm's British recruitment is its first.

"We're going after a special type of telecommunications engineer," Mr. Williams said. "We've found a greater abundance of them there."

As for Phoenix and Tucson, areas with public colleges used by several companies to recruit, Mr. Williams said "Special people are getting scarce around here."

Microcircuits hasn't yet decided on a minimum employment term for engineers recruited in the program, although Mr. Williams and a company spokesman both said they expected there would be some term agreed to, perhaps 1 year.

The largest Arizona components firm, Motorola Semiconductor, has done some recruiting of foreign engineers, said William G. Howard, Jr., vice-president and director of technology and planning.

Total Pool

"The total pool of design engineers isn't large enough," Dr. Howard said. "There aren't enough available." He said Motorola has recruited foreign engineers, but he noted the firm has several offshore plants which employ design and other technical personnel.

"That works out better," Dr. Howard said, referring to the recruitment of a Scottish engineer to work in Scotland, the site of a Motorola Semiconductor facility, rather than hiring such a U.S. resident for employment in the U.S.

With the current state of the semiconductor business, many other semiconductor companies have put the lid on recruiting. These include some firms which have gone overseas in the past.

"It's flat now, so there's no pressing need to hire a substantial amount of people," said Robert Hasselbrink, manager of employment and compensation at Monolithic Memories, Inc.

Mr. Hasselbrink said MMI has gone to the United Kingdom twice before and it has worked out "exceptionally well," but he noted a special period of adjustment for a foreign-born employee coming to work in the U.S.

"There's an acquaintance period," Mr. Hasselbrink said. "The technology is similar but the style of life is dissimilar."

Nevertheless, Mr. Hasselbrink cited MMI's success in hiring British engineers. "The educational system in the U.K. is at least on a par with ours, and there are excellent semiconductor firms offshore," he said.

Asked if MMI binds such newly-recruited employes to an employment contract for a specified period of time, he said "We don't have a written contract. "We ask them if they leave the company before 1 year to reimburse us for re-location costs on a pro-rated basis," he said.

Intel's Oregon operation hasn't done any foreign recruiting, according to recruiter Mike Gore.

"We haven't done any at this point," he said, "but it's possible we will someday. We go where we need to go to get them."

Noting the current state of the semiconductor business, Mr. Gore said "There aren't a great deal of openings at most companies. Many companies are pruning and there's not a lot of heavy recruiting."

Some components firms are reluctant to go overseas for engineering talent.

"As a rule we don't hire outside of the country," said Mike Reiff, chief professional recruiter for Beckman Instruments, Inc. He added "You don't know what you're getting." Although he noted there are many good EEs in Europe, he said it's easier to hire someone locally who can simply drive to work at Beckman's plant in Fullerton, Calif., and start immediately.

Other companies have been able to satisfy their needs by hiring locally. This is true at Computer & Communications Technology Corp., Santa Barbara, Calif.

"Because of our location, there are few industrial companies here, and the requirements are less than in Orange County and Santa Clara County," said Jerry F. Smith, vice president of personnel.

Mr. Smith said CCT hasn't been forced to recruit outside of the U.S. "When we need to, we bring employes in from Orange County and Santa Clara County," he added.

Disadvantages

On the disadvantages of foreign recruiting, Mr. Smith said "It's an expensive way to acquire manpower and it's not all that reliable.

ENCLOSURE 4

Career outlook

Demand for EEs grows fastest

The most-wanted engineers are electronics engineers, and the most-wanted electronics engineers are those with two to five years' experience. That is one conclusion in a survey by Fox-Morris Associates Inc., one of the nation's "big five" professional recruitment and executive search firms.

The survey, which measures only jobs and salaries actually offered and accepted, shows that demand for EEs in 1982 rose 12.4% from 1981 levels. For engineers overall, the increase was 8.1%, less than predicted at the end of 1981. At the same time, salary increases for all disciplines also averaged 12.4%, barely keeping pace with inflation.

Sanford L. Fox, president of the firm, which has headquarters in Philadelphia and offices in 23 cities from coast to coast, notes that associated fields in which EEs often also find employment are high on the most-wanted list, with control and instrumentation specialists ranking second, aerospace fourth, energy fifth, research and test sixth, and industrial seventh.

Although the two-to-five-year EEs are most popular for recruiters, new graduates are only slightly less sought after. However, when it comes to salaries, EEs must take a back seat to petroleum engineers, who win the pennant in three major experience categories. Below are the standings of the engineering disciplines in the paycheck league.

[illegible] HIGHEST-PAID ENGINEERS

Ranking	New graduates average (range X $1,000)	2 to 5 years' experience average (range X $1,000)	Management level average (range X $1,000)
1	petroleum $24,380 (20–27.1)	petroleum $31,580 (26–35.1)	petroleum $46,860 (42–51.8)
2	mechanical $22,440 (19.5–24.5)	electrical or electronics $29,355 (25.5–39.3)	control or instrument $45,729 (35–51.5)
3	chemical $22,287 (18–25.2)	control or instrument $28,475 (24.5–33)	electrical or electronics $45,213 (40–54.6)
4	control or instrument $22,262 (18–26)	mechanical $28,289 (25.5–35)	mechanical $44,313 (39.1–52.5)
5	electrical or electronics $22,144 (19.5–24.5)	chemical $28,075 (25.1–32.5)	chemical $43,429 (35–49.5)
6	mining $21,160 (17–26.9)	metallurgical $27,957 (22.7–40)	research and test $40,780 (35–51.9)
7	energy $21,017 (18–23.1)	research and test $29,900 (25.5–40)	energy $40,429 (35–49.7)
8	aerospace $21,016 (19.6–24)	aerospace $27,150 (26.5–33)	industrial $39,250 (30–50.5)
9	research and test $20,920 (19.5–23)	mining $27,120 (21.5–35.5)	aerospace $39,167 (36.1–48.5)
10	metallurgical $20,671 (17–23.5)	energy $26,814 (24.5–32)	mining $39,033 (31–48.7)

SOURCE: FOX-MORRIS

ENCLOSURE 5

ANDREW

ANDREW CORPORATION

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17 September 1982

The Honorable Henry J. Hyde
U. S. House of Representatives
Washington, D.C. 20515

Dear Representative Hyde:

On 10 September I called your office to express support for an AEA (American Electronics Association) sponsored amendment to H.R. 6514, the "Immigration Reform Act of 1982." The amendment, to be introduced by Congressman Don Edwards of California, would exempt, under stipulated conditions, degreed technical persons from a requirement that they return to their native lands for two years before accepting employment in the United States.

In studying the proposed AEA amendment, Mr. E. L. Brooker, Vice President of Engineering at Andrew and himself an emigre from Australia, has commented at some length on H.R. 6514 and the need for amendatory language. A copy of Mr. Brooker's comments, in the form of an internal memorandum addressed to me, is attached for your possible interest.

The AEA sponsored amendment is quite important to Andrew. We sincerely hope you will give it your full support.

Sincerely

C. Russell Cox
Chairman

CRC:mh

Attachment

cc: Hon. Edward J. Derwinski
Hon. John N. Erlenborn
American Electronics Association

To: C. R. Cox

From: E. L. Brooker
10 September 1982

Subject: AEA AMENDMENT TO H.R. 6514 - IMMIGRATION REFORM ACT

I think that the proposed action from AEA deserves strong support from us. The new act certainly inhibits immigration of the kind that we have used and need to use in the future to sustain our technology here in the U.S. As I read it there are two issues, (1) new graduates forced to return home for two years immediately after graduation, and (2) increased difficulty in getting preference allocations to specially qualified professional or management people. Both of these issues are relevant to Andrew, the second being of greater magnitude than the first.

A similar "two year" rule was applied to Colombo Plan students in Southeast Asia for two decades after World War II. As part of an Australian government plan to assist the developing countries, students were offered training in Australian universities with a requirement to return home for a minimum of two years after graduation. It was my experience that in a very large proportion of cases, the results were negative on the host country. The best students would have made an excellent contribution to Australian technology but were forced out of the country, carrying with them much ill-will directed at the host country. The best of them took positions in other technology-rich countries where opportunities were greater and where they were in direct competition with the host country. The parallel to H.R. 6514 is close. The U.S. would certainly lose an opportunity to employ a select few of the graduates, would develop a bitterness in them against the U.S. and would be exporting technology to other countries competitive with us.

The AEA proposals appear to soften the worst features of the new bill and we should ask Congressman Hyde to support these as a minimum.

Section 212: The AEA Amendment allows waiving the two-year requirement for an alien who meets all three conditions (a) skills in short supply, (b) a university degree and (c) a bona fide employment offer. This seems perfectly reasonable as long as the "short supply" rules are reasonable.

Section 202(B): The definition of preferences is apparently being changed in the new bill. The new "second preference" appears to be for "aliens of exceptional ability", previously in third preference. AEA argues that this new category is going to be too restrictive by being limited, in practice, to Ph.D.'s. Their amendment section 202(B) includes the case of "international renown" in para. (1) but then evidently introduces a new category of "aliens as professionals, managers or executives" in para. (2). Some of our imported people might fall into (1) but all would certainly fall into (2) and I think that this amendment is essential for the health of U.S. industry. It makes a very small impact on the total immigration and on employment opportunities for native American's of similar stature. From a self-interest point of view, it makes little sense for the U.S. to deny itself access to this class of skilled employees.

The AEA proposal should be strongly supported.

Section 203: The AEA amendment proposes two methods of dealing with labor certification. In the first method, the Secretary of Labor maintains a list of short-supply occupations on a regional basis, this being sufficient grounds for granting a visa without case-by-case study. In addition, an employer can demonstrate a specific job opportunity outside of the list where the circumstances need a specific case study.

This amendment makes sense. It would avoid much administrative delay in straightforward cases and would still allow a fair appraisal to be made for special cases.

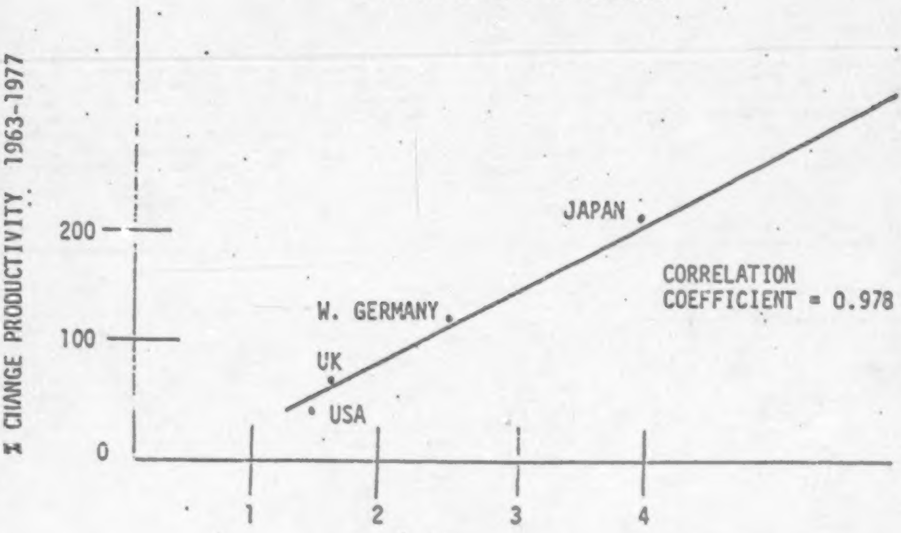
Summary:

I see all AEA proposed amendments to be reasonable and to be the minimum response necessary to correct a very serious potential problem. Like most other companies in the high-technology field, Andrew has found it necessary to import only a very small percentage of its total U.S. labor force. We have supported immigration for only six employees in a total U.S. staff of 1,000. Each of these employees has greatly assisted the expansion of the company and added to employment growth for native Americans. This situation is clearly not unique to Andrew and the AEA proposals deserve the support of every patriotic American.

ELB:clp266

ENCLOSURE 6

RELATION OF PRODUCTIVITY GROWTH TO PERCENTAGE OF ENGINEERS



ENGINEERING GRADUATES AS
% OF RELEVANT AGE GROUP

DATA FROM: "Science and Engineering Education for the 1980s and Beyond, NSF and Department of Education, October 1980, p. 140.

ENCLOSURE 7

America's electronics industries can look forward to continued phenomenal growth...if they act today.

During the past decade, electronics has had an annual 17 percent growth. Sales of the top 100 electronics companies increased 46 percent between 1979 and 1981. Last year, the top 100 companies' sales reached $169.4 billion, bringing total sales for the U.S. industry close to $220 billion. World demand for electronics products is expected to soar in the next decade.

Can U.S. electronics companies speed up development and production fast enough to meet this demand? Can they win against growing overseas competition from Japan, West Germany, and others?

Given the projected shortage of qualified electrical and computer science engineers, the outlook is questionable...unless action is taken now.

OUTLOOK FOR THE INDUSTRY

LACK OF TECHNICAL TALENT CHOKES INDUSTRY GROWTH

A recent AEA study predicts a shortfall between the needs of the U.S. electronics industry and the supply of new EE and CS engineers as some 20,000 annually through 1985.

"The lack of electronic and computer science engineers may be the single most important factor limiting the growth and continued vitality of electronics industries."

William Perry, Partner, Hambrecht and Quist; Chairman of the Board, Electronics Education Foundation

"We rely on the nation's educational system ... to produce sufficient numbers of qualified people—not only for the Department of Defense and its military services, but for the defense-industrial base as well.... It is with them that our future as a nation lies.... If we are to survive, we must do more."

Casper W. Weinberger, Secretary of Defense

U.S. COLLEGES SEEN AS BOTTLENECK

Contrary to what is commonly thought, today's engineering students are competent in math and science. And record numbers want to pursue technical careers. The hard truth is that colleges simply cannot handle additional undergraduates.

The bottleneck exists because:

- There is a critical shortage of engineering faculty. Colleges are forced to limit undergraduate enrollment to maintain educational quality. In solid state electronics, computer engineering, and digital systems, faculty vacancies are almost 50 percent.
- There is an alarming decline in the number of Ph.D. students. Graduates with bachelor degrees have little incentive to undertake four to six years of costly graduate study to become professors when industry's starting salaries surpass faculty salaries.
- Inadequate and outdated laboratory equipment and facilities make it impossible to prepare students for state-of-the-art technology. Latest estimates to modernize U.S. engineering colleges range from $500 million to more than $1 billion.

Recent cutbacks in federal funds for higher education and phasing out of government grant and loan programs exacerbate the problem.

CONTRIBUTING FACTORS

INDUSTRY-WIDE ACTION THE ONLY SOLUTION

"It is no longer an open question of whether the shortage of electrical engineers in the U.S. is, or is not, a crisis. It is. Sooner or later every sector of the economy depending upon electrical engineering will be affected."

Stephen Kahne, Director, Division of Electrical, Computer, and Systems Engineering, National Science Foundation

As part of its ACTION program to redress the shortage, AEA has established the non-profit ELECTRONICS EDUCATION FOUNDATION to raise money for engineering colleges and universities.

Its goals are to:

- provide faculty development grants up to $10,000 each to aid in retention and recruitment of engineering professors. These grants will be targeted to colleges around the nation with the greatest potential for increasing EE and CS undergraduates.
- offer a combination fellowship-forgivable loan package so graduate students can pursue doctoral programs to become engineering professors.
- furnish additional state-of-the-art instructional equipment and service contracts to engineering colleges so graduates will be immediately productive when hired and teaching careers will be made more attractive.

HOW MUCH SHOULD YOUR COMPANY INVEST?

The FOUNDATION asks companies to invest cash or cash equivalents equal to 2 percent of their annual R&D expenditures.

The 2 percent standard is a fair and equitable investment to develop the engineers a company needs for growth. This is especially true when compared to dollars expended on recruitment and training of new graduates unfamiliar with state-of-the-art technology.

As added incentive, companies can donate equipment at very little cost by taking advantage of the R&D tax credits.

GIVING THROUGH THE FOUNDATION MORE EFFECTIVE

The FOUNDATION identifies where industry dollars can have the most impact. AEA's Regional Industry Committees establish local priorities where faculty grants are most likely to result in an increased throughput of undergraduates. The Foundation Advisory Board determines funding priorities for colleges and universities where no Regional Committees exist. The FOUNDATION uses quality measurements to funnel fellowship monies in the name of companies to outstanding research universities for U.S. citizens to enter doctoral study and become professors

In addition, the FOUNDATION will:

- monitor grants and report to companies
- help companies achieve a high dollar return by organizing collaborative grants
- strengthen industry-wide approaches to upgrade and expand engineering colleges by coordinating efforts around the nation
- provide increased visibility for companies
- promote university contacts to reduce recruitment costs for companies

ACTION NEEDED . . . NOW

- For every 10,000 people,
  - 20 in the United States and 1 in Japan are lawyers.
  - 40 in the United States and 3 in Japan are accountants.
  - 70 in the United States and 400 in Japan are engineers.

- For every million people,
  - Japan graduates 163 electrical engineers.
  - Soviet Union produces 260 electrical engineers.
  - United States graduates 67 electrical engineers.

- The United States needs 1,000 new engineering faculty each year, while producing approximately 450 annually.

- Average starting salaries for new engineering Ph.Ds are $33,500 in industry, $21,634 in teaching.

- The pool from which faculty come is shrinking:

	1971	1979	1980	1981
Ph.D./EE degrees:	899	545	523	503

- Faculty and equipment shortages have resulted in a dramatic decline in the quality of engineering education as reported by the Accreditation Board of Engineering and Technology (ABET). In 1981, 71 percent fewer colleges and universities received the full 6-year ABET accreditation than have done so historically, and 45 percent more than in the past were noted as "needing improvement."

- Engineering college enrollments have doubled in ten years without a corresponding increase in either faculty or equipment. This has resulted in a cutback of course offerings by 54 percent of U.S. engineering institutions.

- According to the 1980 Presidential Report on Engineering and Science Education, the United States lags fourth in scientific literacy behind the Soviet Union, West Germany, and Japan.

- Engineering accounts for only 6 percent of the total undergraduate degrees awarded in the United States. Comparable figures for Japan are 21 percent, Soviet Union 35 percent, and West Germany 37 percent.

- Engineering students, who made up 6 percent of last year's graduates, received 65 percent of reported job offers.

- The number of U.S. citizens within the faculty pool is rapidly diminishing. The number of Ph.Ds awarded to foreign nationals in all engineering fields increased 142 percent between 1971 and 1981. Last year 50 percent of all Ph.Ds in electrical engineering went to foreign students. Historically, only 1 in 3 remains after graduation.

- Increased defense spending will further deplete the number of U.S. citizens available for recruitment by commercial, nondefense companies and engineering university faculties.

- The increase in undergraduate students has strained the capacity of university resources. Faculty shortages have forced more than 20 major universities to cap or cut back engineering enrollments. Among them are: UCLA, UC Berkeley, Washington State, Notre Dame, Purdue, Ohio State, Cornell, Georgia Tech, and Rensselaer Polytechnic Institute.

FACTS TO CONSIDER

QUESTIONS YOU MAY HAVE

"Will my company be able to give to the college of its choice?"

YES, but you're encouraged to consider the list identified by AEA's Regional Industry Committees and Foundation Advisory Board, so you'll be assured of getting the highest leverage for your donation.

"If we go through the FOUNDATION, won't we lose visibility with the recipient college?"

NO. The FOUNDATION'S purpose is to help link companies with universities. Every donation through the FOUNDATION is linked by COMPANY NAME within the university. In fact, in most cases, FOUNDATION staff are more effective than an individual company in "naming" such gifts and enhancing company visibility.

"Can I tell the FOUNDATION how my company's donation should be used?"

YES, except for selecting graduate students for fellowships, which will be handled by the colleges and universities. You will be given details on your "fellow," so that you may follow progress, etc.

"My company has cash flow problems at the moment. We'd like to help but not now. Will you accept a pledge for a future contribution?"

YES. We do ask you to sign a Statement of Intent specifying the amount, purpose, and date of payment.

"We are a small company and cannot write a check for a large amount. How can we make an impact?"

The FOUNDATION either combines your gift with others or you write a monthly or quarterly check to the FOUNDATION, which commits on your behalf the full sum to a university.

"Why shouldn't my company's gift go to the college directly? Why give to the FOUNDATION?"

The important thing is to give! There are advantages to giving through the FOUNDATION, however. If your company should suffer an unexpected setback in the marketplace, the FOUNDATION sustains your investment in engineering education by using other resources temporarily. More than that, the FOUNDATION generates more visibility for your contribution, promotes more opportunities for informal contacts with colleges, and ensures a better return for your gift.

"The AEA Electronics Education Foundation is an excellent vehicle to match industry resources to the specific needs of leading schools in higher technical education. It should appeal to companies both large and small since it's simple, direct, and takes no internal management time."
John A. Young, President & CEO, Hewlett-Packard Co.

"AEA, through its Electronics Education Foundation, is taking a leadership role to increase the quantity and quality of graduates from U.S. engineering institutions. Its campaign to generate new monies for graduate fellowships, faculty development grants, and new equipment merits our industry's strong support."
Robert N. Noyce, Vice Chairman, Intel Corporation

"If we in high technology do not take the lead in overcoming the major obstacle to our collective long-term growth—namely, the limited supply of technical graduates—then who will do it? AEA's effort, through its Foundation, to stimulate companies to invest 2% of R&D expenditures in engineering education provides the needed direction to begin."
Ray Stata, Chairman and President, Analog Devices, Inc.

"It is imperative that we support universities through AEA's Electronics Education Foundation, so that we continue to get the best and brightest students flowing into our industry for years to come."
C. Lester Hogan, Director & Consultant, Fairchild Camera and Instrument Corp.

ELECTRONICS EDUCATION FOUNDATION

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INVESTMENT IN EDUCATION • STATEMENT OF INTENT

Corporate Sponsor

Corporate address ( ) Telephone

PAYMENT:

Terms: Total Amount $ ____________
☐ Monthly $ ____________
☐ Quarterly $ ____________
☐ Lump Sum $ ____________
Payment Commencement Date: ____________

PROGRAM:

(check appropriate box)
☐ Fellowship $ ____________
☐ Faculty Development $ ____________
☐ Equipment/Service Contract $ ____________

Volunteer Signature

Corporate Representative Signature

Date

Return to: Louis S. Coloia
Electronics Education Foundation
2680 Hanover Street • Palo Alto, California 94304 • (415) 857-9300

ENCLOSURE 8

AEA

AMERICAN ELECTRONICS ASSOCIATION

ENGINEERING EDUCATION PROGRAM

AEA's Engineering Education program seeks to increase the quality and quantity of electrical/electronic and computer science engineering graduates. It seeks remedies primarily by focusing on the engineering faculty shortage problem, which is restricting undergraduate enrollments and decreasing educational quality.

AEA's Board of Directors set a goal for its member companies to each "invest" 2% of R & D expenditures in engineering education in cash or cash equivalents. It further recommends that much of industry's assistance be in the form of faculty development grants, graduate student fellowship-loans, and equipment in the EE/CS area.

AEA has set a fund raising goal--through its Electronics Education Foundation--to raise 300 faculty development grants of $10,000 each to help universities recruit and retain faculty today. Companies are also asked to fund the development of new faculty by providing 200 graduate student grants, at an average of $15,000 each year to U.S. citizens who plan to pursue a teaching career in EE/CS engineering. Part of each grant is a repayable loan which is "forgiven" if the recipient earns a Ph.D. and teaches engineering in a U.S. college for three years. Hewlett-Packard is vanguarding the fellowship loan program with AEA, and has committed to fund over the next eight years a total of fifty "fellows" at a cost of $6 million. The Foundation will also undertake a demonstration project to provide part-time continuing education to upgrade employed engineers, oriented around media-delivered instruction, and leading to a Master's degree.

AEA staff also coordinates federal and, where appropriate, state legislative action related to engineering education. The focus is on creating tax incentives to encourage industry to provide resources in areas most likely to attack the problem and initiating lobbying activities in states which are likely to expand engineering budgets and increase faculty salaries for university engineering departments.

Committees composed of industry executives have been organized around the country to develop action plans to address the problem on a regional or state basis. These plans may include fund-raising, lobbying efforts, developing new curriculum, etc. Committees have presently been formed in: Colorado, Minnesota, Orange County, Oregon, San Diego, San Francisco, Texas, Tri-State (New York, New Jersey, Connecticut), Washington, and Massachusetts.

ENCLOSURE 9

AEA REGIONAL ELECTRONICS EDUCATION COMMITTEES

MEMBERS

Six to ten CEO or corporate level executives selected on the following criteria:

- Concern about the shortage of engineers and
- Willing to work to solve it.

No educators or government people are members of the committee, although they may be invited to selected meetings. Since no one educator can represent more than his or her own institution, this restriction helps ensure that industry sets priorities for assisting colleges and universities as objectively as possible.

OBJECTIVES

1. Consider and prioritize needs of area colleges and universities to achieve one or more goals of AEA's Engineering Education program.

2. Identify solutions to be undertaken, such as:
   - Raising funds from area AEA companies to support such items as faculty development grants, graduate student fellowship-loans, equipment, etc. Any regional fund-raising is coordinated by AEA Foundation staff.
   - Working with state legislators to improve the state of engineering education (e.g., increase funding for engineering departments, differential salaries for engineering professors, etc.).
   - Encouraging companies to work directly with universities.
   - Setting up continuing education programs leading to a Master's degree for current employees, using video tapes, industry tutors, etc.

PROGRESS IN FORMING REGIONAL COMMITTEES - OCTOBER 1982

*Chairperson

Arizona (Now forming)

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Advanced Semiconductor Materials America, Inc.

Texas

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Communications Industries, Inc.

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Lonnie Dunkin, Micro Electronics Technology Planning Director
Rockwell International

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Peter Davis, Director, Human Resources
Burroughs Corporation

Charles Dyon, Vice President, Human Resources
Simmonds Precision

Henry David Epstein, Group Vice President
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Leeds & Northrup

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Rand Gesing, Director, Human Resources
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Avionic Systems Corporation

Jeffrey Kaplowitz, Director, Employee Relations
Siemens Corporation

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Sperry Inc.

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Xerox Corporation

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John E. Wedge, Vice President, Industrial Relations
Universal Instruments Corporation

Steve Ulin,Personnel Director
VEECO Instruments

San Francisco

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IBM

J. Reid Anderson, Chairman
Verbatim Corporation

William E. Dean, President
Acurex Corporation

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Hewlett-Packard Co.

Richard Frankel, President
Kevex Corporation

Jack Grout, Corp. Manager of Education Relations
Hewlett-Packard

Don Hammond, Director, Physical Research Center
Hewlett-Packard

C. Arthur Lasch, President
Machine Intelligence Corporation

Wayne Lockhart, Management Consultant

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Molectron Corporation

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McCuen & Steele

Glenn E. Penisten, Chairman & CEO
American Microsystems Inc.

William J. Perry, Partner
Hambrecht & Quist

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Lockheed Missiles & Space

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Physio-Control Corporation

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Interface Mechanisms, Inc.

Edward W. Barnholt, General Manager
Hewlett-Packard Company

Robert L. Hancock, President and General Manager
Avtech Corporation

Frederick R. Hume, Vice President Planning and Technology
John Fluke Manufacturing Co.

Robert H. Ilginfritz, Vice President and General Manager
Sundstrand Data Control, Inc.

Lawrence L. Mayhew, President and CEO
Data I/O Corporation

Wolfgang O. Schunter, Director of Engineering
Sundstrand Data Control, Inc.

Stanley V. Seiffert, Chairman
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ENCLOSURE 10

ELECTRONICS EDUCATION FOUNDATION
GOALS AND 1983 PROGRAM

Board of Directors:

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Officers:

Pat Hill Hubbard, President
Wm. J. Phillips, Secretary/Treasurer

GOALS:

- To increase the supply of BS/EE and BS/CS engineers without a reduction in quality of education;
- To increase the number of graduate students in the EE/CS areas pursuing doctoral degrees to become teachers;
- To improve productivity of the traditional education system through use of computer-based education; and
- To increase the number of continuing education programs leading to a masters degree for currently employed engineers, using video-tape and other media-delivered instruction;

1983 PROGRAM GOALS:

(1) To provide 300 faculty development grants of $10,000 each to colleges and universities throughout the country with faculty shortages which are limiting an increased throughput of undergraduate EE and CS engineers.

(2) To provide 200 graduate student fellowships at an average of $15,000 each year for two years, renewable upon competent performance for another two years, to be distributed through quality research universities; 50% of the total fellowship grant will convert upon graduation to a low cost loan or be forgiveable if the graduate teaches for three years.

(3) To undertake a demonstration project with one or more companies and universities to provide part-time continuing education to retrain and upgrade the effectiveness of employed engineers, oriented around media-delivered instruction, and leading to the awarding of a masters degree.

(4) To provide assistance to the AEA regional Electronics Education Committees, who may use the Foundation as a "pass-through" to target funds raised or committed to an area university, to fiscally account to the company for university use of the money, and to monitor the university to see that the monies were used as stipulated.

AEA ELECTRONICS EDUCATION FOUNDATION

The Electronics Education Foundation is a 501 (c) (3) non-profit, public benefit corporation controlled by the American Electronics Association, and considered a flexible vehicle through which to accomplish the aims and purposes of AEA's Engineering Education Program.

Assistance to AEA Regional Committees

The Foundation will assist regional AEA Electronics Education (EE) Committees to "target" contributions to area/state colleges. Priorities set by regional committees will stimulate and guide company donors. Funds can be targeted for a particular college, a particular department and field, for a specific level of assistance--such as an assistant professorship or a full professor, etc. They can be targeted to purchase specific equipment, to buy service contracts--and any other special interest the company donor may have.

The Foundation will assist: (1) to disburse funds to a university as requested by the company; (2) to fiscally account to the company for disbursement by the university of the monies; and (3) to monitor the university to see the gift was used as stipulated.

Small-to-Mid-Size Company Assistance

A unique role the Foundation already plays is to help small-to-medium size companies to achieve a larger impact with their donation. Some companies cannot readily "cut" a $10,000 check at one time to a university but can more easily write a series of monthly checks to the Foundation. For example, the Foundation can guarantee the donation of a $10,000 faculty development grant on behalf of Company-X to University-A. Company-X then remits a $1,000 check to the Foundation each month for ten months. The Foundation works on behalf of Company-X to keep its identity with the gift very visible within the university. In most faculty grants at public universities, the Foundation can ensure that the name of the company is attached to the gift--i.e., "Company-X Professorship" or "Company-X Chair."

Assistance from a National Perspective

Although one of the strengths of AEA's Engineering Education program is to conduct solutions through AEA committees regionally, there are three areas which may be more effectively addressed from a broader or "national" perspective:

1. Faculty development grants to colleges and universities not located where electronics companies are.

   The faculty shortage situation is a national problem, not confined to one or two states. And, while it exists in private as well as public institutions, low professor salaries are more pronounced in public universities and, generally, more readily remedied than in private. To some extent, raising faculty salaries at public colleges will stimulate the raising at private ones as well.

   Only four of the "top-ten" BS/EE and BS/CS-producing states have concentrations of electronics companies which provide the base to form AEA regional committees. The Foundation needs, therefore, to direct resources of those companies with a broad, "national" perspective to provide faculty development grants to engineering colleges in states such as Pennsylvania, Illinois, Indiana, Michigan, Ohio, etc.

2. Graduate student fellowships-loans to encourage U.S. citizens to pursue a doctoral degree and teach engineering.
   - o Department of Defense plans to offer 40-to-50 $15,000 fellowships through ROTC but targeted toward military service as an end-goal.
   - o NSF has all but cut out its fellowship program; federal funds are available only to fulfill commitments already made. Restoration of fellowship money to NSF, if it comes, is likely to be small.
   - o The Federal Government has cut its student loan program by 50 percent.

   Such cuts come when already too few BSE graduates are motivated to ignore attractive industry salaries and undertake four years of costly graduate study. 46.3% of those now doing so are foreign, and many of these will return home after graduation. 24% of all junior engineering faculty currently in the United States received their bachelor degree from a non-U.S. university; some have communication problems with students.

   A situation exists, therefore, where the faculty pool is growing smaller, composed increasingly of foreign students who may leave the country after graduation. The numbers of U.S. citizens in graduate programs who want to teach must be increased.

   AEA's Foundation will raise funds for 200 graduate fellowship-loans--a quantity and level of support to make a difference. Such fellowships will be distributed to research universities throughout the country, who will select qualified students to receive them. The graduate student grants will be part non-repayable fellowship and part loan. The loan will be forgiveable if the student graduates and teaches EE or CS engineering at a U.S. college or university for three years.

3. Development of a masters degree program for employees of companies, using media-based instruction, industry tutors, etc.

   Part-time continuing education needs to be provided to employed engineers, so that they can maintain and upgrade their professional skills. The Foundation will "umbrella" funding from companies to pilot a demonstration project consisting of several companies and their companion universities. Courses, leading to an MS/EE degree, may be delivered via satellite or video tape to the work place.

ENCLOSURE 11

AN AEA GUIDEBOOK

MODEL UNIVERSITY-INDUSTRY ENGINEERING PROGRAMS

April 1982

Prepared by the
American Electronics Association
Engineering Education Department

Published by:
American Electronics Association
2680 Hanover Street
Palo Alto, California 94304

Offices in Southern California, New England, Washington, D.C., and the metropolitan New York area.

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INTRODUCTION

This guidebook presents sample industry-university programs as part of AEA's leadership role to encourage companies to increase investments in engineering education. Increased contributions to U.S. engineering colleges and universities are needed to produce the number of quality engineers required by electronics industries.

AEA's position, as stated in "Plan for Action to Reduce Engineering Shortage...with Supporting Data," is:

> Unless aggressive steps are begun and sustained to bring additional resources into U.S. engineering colleges and universities, the resulting shortage of electrical/electronic and computer engineering graduates will threaten the continued health and vitality of the electronics industry and the social, economic, and military leadership of the United States.

Although some continue to question survey projections, the "Myth of Violent Oscillations" in supply and demand for engineers generally has been laid to rest. Even the conservative Bureau of Labor Statistics now projects an annual need for 80,000 engineers through 1990. Few who have moved beyond discussion of numbers and into educational settings quarrel with the need for immediate and substantive remedies.

Many factors contribute to the engineering shortage. Dwindling resources are shutting educational doors to many young people, including qualified females and minorities. National figures estimate 2,000 to 2,500 unfilled engineering faculty positions. The problem is compounded by outdated teaching and research equipment and facilities.

Industry salaries, often 25 to 50 percent higher than those for entry-level engineering professors, exacerbate the growing disinterest of U.S. citizens to pursue four years of expensive graduate study to become tomorrow's faculty. Foreign students have become the primary applicants for teaching positions. Twenty-four percent of all junior engineering faculty in today's U.S. engineering institutions received their Bachelor's degrees from non-U.S. universities.

Foreign students earned half of the doctoral degrees in engineering awarded in 1981. Thirty-four percent of these recipients are on temporary visas and likely to return home to work and teach. The number of U.S. graduates, on the other hand, continues to decline.

The federal government is out of the education business, and private industry, state governments, and public and private universities have inherited responsiblity to find solutions. In response, AEA approved the program of action outlined on pages 9-13.

Underlying this guidebook is a suggestion that companies consider new kinds of contributions. Historically, private industry has funded private colleges and public tax dollars have supported public institutions. Diminishing state budgets now cause public education to be in critical need of industry assistance as well. And, while many worthwhile programs should continue to receive industry funds, the faculty shortage issue requires new focus.

Companies can take an immediate step to assist engineering education. Please help us gather information on 1981 and 1982 corporate contributions by using the forms on pages 1-5.

The National Engineering Action Conference (NEAC), sponsored by Exxon Corporation, sought to generate action-solutions to the engineering education problem. The NEAC group and AEA recognize many solutions are needed. This guidebook may assist those who wish to begin.

Pat Hill Hubbard
Vice President
Engineering Education

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ENCLOSURE 12

AAES

Project
on
Engineering College Faculty Shortage

CATALOG OF PROGRAMS IN INDUSTRY, ACADEME, AND SELECTED INSTITUTIONS TO AID GRADUATE ENGINEERING EDUCATION

Issue No. 2
August 1, 1982
Ruth E. Geils

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Statement of the Anti-Defamation League of B'nai B'rith on the Immigration Reform and Control Act of 1983

The question of immigration reform has always been a concern of the Jewish community. Because Jews as a people have historically been forced to flee from various areas of the world to escape persecution and extermination, we have favored laws that made possible swift and painless entry into countries willing to offer shelter. From the time that the Anti-Defamation League of B'nai B'rith was founded in 1913 up until the passage of the McCarran-Walter Act in 1952, the immigration laws of this country were restrictive and discriminatory. To the Anti-Defamation League, whose founding mandate was to fight discrimination and prejudice, these laws represented nothing more than a codification of the very principles to which we were opposed. Accordingly, in 1952 and again in 1953 the Anti-Defamation League expressed its opposition to the then pressing issues of discriminatory national origins quotas, inequality of treatment between naturalized and native-born citizens, harsh and inflexible deportation procedures and the unchecked discretion vested in immigration officials to exclude would be immigrants.

In February 1982, the Anti-Defamation League took up the plight of the Haitian refugees and urged the enactment of legislation by which the status of those seeking asylum in the United States would be adjudicated swiftly and fairly.

While reform legislation to date has attempted to resolve many of our concerns about harsh and restrictive immigration laws, the Anti-Defamation League recognizes that the changing political and economic climate have disclosed new flaws in the immigration laws, in its inability to solve problems of illegal immigration, mass asylum, and the sheer numbers of people seeking refuge in this country. The Simpson-Mazzoli Bill as it emerged from the Senate and House in its various forms last term, represents the most significant effort to date to develop comprehensive immigration laws to counter the changed nature of the problems and yet preserve the liberal immigration policy of which this country can be so proud.

Given these laudatory goals, the Anti-Defamation League believes that effective immigration laws must reflect certain basic principles. The Anti-Defamation League strongly supports the concept of family reunification. We believe that while the present ceiling on legal immigration is generous, immediate relatives of United States citizens should not be included within that ceiling. This class of immigrants who come to this country to join their family should continue to be admitted without numerical limitation. Similarly ~~lines~~, it would be a mistake to contravene the principle of family reunification by eliminating the preference found in existing law for siblings of American citizens and unmarried relatives of permanent residents.

Another positive aspect of the proposed legislation is the streamlined procedures for adjudicating asylum claims. This will insure that potential entrants seeking refuge in this country will not endure prolonged detention pending review of their claims. We believe however, that the right of full judicial review and not merely that review available on a writ of habeas corpus must be afforded in all asylum cases.

The concept of amnesty is also a crucial part of any reform legislation. No immigration laws can be enforced at this date in our country's history, when our borders have been porous and we have utilized the services of aliens in this country, albeit illegally; unless we legitimize the status of these aliens and commence enforcement of the reform laws anew.

The major aspect of the legislation with which the Anti-Defamation League is deeply troubled concerns the proposals to establish a system of worker identification and sanctions against employers who employ illegal aliens. Any system of employer sanctions and worker identification is fraught with civil liberties concerns. From the standpoint of the potential employee, worker identification cards have the potential to be developed into a "domestic passport" the use of which could be extended to areas never envisioned in the passage of this legislation. The potential danger will not be eliminated merely by requiring the President to monitor this system. Moreover, from the employers standpoint, the fear of possible sanctions, rather than encouraging employers to comply with the requirements will cause them to refuse to hire anyone who does not appear to be a native born American. Illegal aliens fill a need in certain labor intensive industries by working at menial jobs that most Americans reject. Given the benefit that these workers supply to the economy, the employer and ultimately the consumer, it is unfair to impose this undue burden of verification and the risk of sanctions on employers. We urge this Congress to decline to incorporate these concepts into what might otherwise be effective legislation.

It is our hope that the immigration legislation that emerges from the 98th Congress will reflect the concerns that we have expressed. When that is accomplished, this country will truly have legislation in place which is fair and reflects concern for humane treatment of the world's population.

ASIAN AMERICAN
LEGAL DEFENSE AND
EDUCATION FUND
350 BROADWAY • SUITE 308 • NEW YORK N.Y. 10013 • (212) 966-5932

STATEMENT OF THE ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND

ON THE

IMMIGRATION REFORM AND CONTROL ACT OF 1983
(S. 529 and H.R. 1510)

The Asian American Legal Defense and Education Fund (AALDEF) is a non-profit organization founded in 1974 to address the unique legal needs of Asian American communities. Through its programs of impact litigation and community education, AALDEF educates Asian Americans about their legal rights and conducts litigation that will guarantee equality and full participation to Asian Americans in all aspects of our society.

Discrimination against Asian Americans has historically been linked to the enactment of immigration laws directed specifically at Asians because of their race and national origin. Therefore, AALDEF has maintained a special concern about the content and implementation of our immigration laws. The social and economic well-being of Asian Americans, and of all people, depends upon a more equitable and enlightened immigration system.

The Simpson-Mazzoli bill proposes significant changes in this country's immigration policies. In our view, the bill erodes many principles that are fundamental to an equitable and humane immigration policy. Several of the bill's provisions will cause undue hardship, without achieving an effective resolution of the immigration problems that affect this country.

AALDEF's statement expresses several urgent concerns about the Simpson-Mazzoli bill that affect our constituents in Asian American communities.

Fifth Preference

The current fifth preference accords to brothers and sisters of U.S. citizens 24% of all preference visas, the largest allocation among all the preference categories. The Simpson-Mazzoli bill proposes to abolish this category.

Our immigration laws have conferred benefits upon brothers and sisters of U.S. citizens for over sixty years. American policies have steadfastly acknowledged the critical role these relatives play in the nuclear family structure and in the integration of immigrant populations into our diverse American society. The elimination of the fifth preference would severely undermine the policy of family reunification that is the foundation of our immigration laws.

Asian American communities have particular objections to this drastic reversal in immigration policy. Only since 1965 have Asians been eligible to apply for family members, including brothers and sisters, on an equal basis with applicants from other countries. The current backlogs in fifth preference petitions are most pronounced among petitioners from Asian countries. This provision would signal a return to the racist exclusionary laws that were historically directed against Asian immigrants.

Our national interests call for a framework of family reunification that corresponds to the needs of immigrant communities, without adversely affecting other domestic concerns. The current system, although imperfect, does affirm the vital social and cultural support traditionally offered by brothers and sisters, even within those families comprising several generations of the American-born. Abolition of the fifth preference would weaken this support system and result in great isolation and hardships, without promoting any legitimate interests relating to the character or volume of immigration.

Accordingly, AALDEF strongly urges the retention of the fifth preference category.

Colonial/Dependent Area Subquota

Current law prescribes a limit of 600 preference visas to natives of colonies or dependent areas, as compared with a 20,000 annual limit for natives of independent countries. This provision's restrictive impact falls primarily upon residents of Hong Kong and constitutes an ignoble vestige of prior discriminatory immigration laws. In fact, the colonial subquota has been cited repeatedly as being incongruous with current policies, most recently by the United States Commission on Civil Rights and the Select Commission on Immigration and Refugee Policy.

AALDEF strongly urges that this provision be abolished.

Second Preference

The bill proposes to limit visas under the second preference to children and spouses of lawful permanent residents, thereby eliminating unmarried sons and daughters over 21 from eligibility for lawful permanent residence.

There is no legitimate basis for excluding adult unmarried sons and daughters, clearly part of the nuclear family, from the policy of family reunification underlying our immigration laws.

AALDEF strongly urges that this provision be deleted.

Employer Sanctions and Compulsory Work Permits

The bill proposes to penalize employers who knowingly hire undocumented alien workers and all persons who knowingly recruit or refer undocumented workers for employment. The bill also requires the development of a "secure system to verify work authorization," as in the creation of a compulsory work permit or identification card.

Based on AALDEF's substantial experience in employment and labor rights issues, we can well understand the desire to curb unlawful employment practices, such as an employer's failure to pay minimum wage and provide decent working conditions. Nonetheless, we are convinced that employer sanctions would be ineffective in deterring the employment of undocumented aliens or preventing employment abuses. Instead, such a provision would seriously infringe upon the protected rights of all workers, especially Asians and other minorities. It is AALDEF's position that illegal employment practices must be fought with more conscientious and vigorous enforcement of existing fair labor standards laws.

AALDEF believes that despite a federal employer sanctions law, unscrupulous employers will continue to hire, if not seek out, undocumented workers and engage in illegal employment practices if they are intent upon doing so. Defenses might still be available to such employers who can establish good faith efforts to comply with applicable verification procedures.

This provision would also pose immense difficulties of enforcement. Those agencies already charged with the enforcement of wage and hour standards are presently unable to effectively deter violations of existing labor laws. It is difficult to imagine the Immigration and Naturalization Service with any significant capability to monitor and remedy illegal employment practices. Enforcement at best would be selective and would be unlikely to have any widespread deterrent effect.

In addition, Asians and other racial minorities, regardless of immigration status, will also face the likelihood of increased employment discrimination at the hands of honest employers seeking to avoid liability under the proposed sanctions. Moreover, unscrupulous employers will be able to use this provision as a pretext for refusing to hire workers because of their race, ethnicity or political opinion.

Finally, AALDEF is opposed to any form of compulsory work permit or identification card system. We vigorously join with other organizations and individuals who have pointed to the potential civil liberties violations and possible abuses that such a system would inevitably create.

For these reasons, AALDEF strongly urges that no system of employer sanctions or compulsory work permits be enacted.

Legalization Provisions

The Legalization Program under the bill would provide a limited Amnesty to those individuals who enter the United States before January 1, 1977, and it would further allow a temporary resident status to those individuals who enter the United States before January 1, 1980. AALDEF believes that the Legalization Program, while certainly a gesture in the right direction, should be more liberalized to include all undocumented aliens in this country as of January 1, 1982.

In addition, all undocumented persons eligible for legalization should be granted permanent resident status, and temporary resident provisions of the bill should be deleted. The creation of a temporary resident alien status for undocumented workers would encourage some unscrupulous employers and individuals to exploit and treat temporary resident aliens unfairly.

Conclusion

AALDEF believes that these aspects of the bill fail to reflect the standards of humane and equitable immigration policy that would genuinely serve our national interest. AALDEF urges that the concerns we have expressed on behalf of Asian American communities be given serious consideration.

STATEMENT OF

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

PRESENTED TO THE

SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY

of the

SENATE COMMITTEE ON THE JUDICIARY

AGC is:

- More than 32,000 firms including 8,500 of America's leading general contracting firms responsible for the employment of 3,400,00-plus employees;
- 112 Chapters nationwide;
- More than 80% of America's contract construction of commercial buildings, highways, industrial and municipal utility facilities.

March 7, 1983

The Associated General Contractors of America is the largest single spokesman for the construction industry. In conjunction with its 112 chapters, AGC represents more than 32,000 firms including 8,500 leading general contractors. AGC members are responsible for the employment of 3.4 million plus employees. They perform more than 80% of all contract construction of commerical buildings, highways, industrial facilities and municipal utilities.

AGC does not condone the employment of illegal aliens, but we have concerns over legislative proposals currently under consideration. Those concerns are with the recordkeeping requirements and the shift of law enforcement responsibilities from federal, state and local authorities to employers.

In the construction industry in particular, the proposed recordkeeping requirements are especially onerous given industry turnover rates as high as 300%. The employment process in construction is such that employers must continually hire and lay off as various phases are completed. Employees who clear the site are not always the employees who excavate, form and pour foundations, lay block or brick, or provide skilled services as the project progresses. The project by project nature of construction, together with the worker mobility requirements, results in exceptionally high turnover rates.

In addition, employment may only last for a few days but under the proposed recordkeeping requirements the employer of four or more employees would have to retain a verification record for at least five years. Under the requirement an employee's papers would have to be checked and a record made and retained for five years in the usual construction circumstance where the employee had worked only five days earlier on another project of the same employer.

Over and above the recordkeeping burden, AGC is also concerned over proposed legislative language indicating that an employer satisfies the requirements only if the employee's documents, examined by employer, "reasonably appear on their face to be genuine." There is no end to the interpretations that can be given to such language or resultant verification procedures an employer may have to adopt to avoid fines or imprisonment. Even with the most elaborate and thorough verification procedure, the employer would still have the potential burden of defending his legitimate employment decision if sanctions are imposed.

The recordkeeping requirement is apparently intended to offset concerns that employer sanctions will result in discrimination based on a potential employee's national origin. Even assuming that the bill would result in such discrimination, the recordkeeping requirements are not the solution. For example, the recordkeeping proposal does not extend to the labor unions or to their hiring halls. Collective bargaining agreements commonly require construction employers to hire from hiring halls. If the hiring hall discriminates against an individual, the employer will not know that such discrimination has occurred.

Furthermore, the problem of discrimination is a problem already addressed by Title VII of the 1964 Civil Rights Act, Executive Order 11246, and by a myriad of state statutes and executive orders. Those statutes and executive orders already provide adequate remedies for discrimination.

AGC urges the Subcommittee to delete the recordkeeping requirement, or at least exempt industries, such as construction, with unusually high rates of turnover among their employees. For these industries, onerous and unworkable recordkeeping requirements would only inflate costs without achieving the objectives of the proposed legislation.

At Senator Simpson's request, the General Accounting Office (GAO) in August of 1982 identified several countries with restrictions on the employment of illegal immigrants, and determined that such restrictions do not deter illegal immigration. Based on AGC's belief and the GAO findings, we therefore encourage Congress to effect immigration reform through enforcement of immigration laws by the responsible agencies of government and legislation which does not impose unnecessary and unworkable recordkeeping burdens on employers.

March 7, 1983

STATEMENT OF THE CALIFORNIA GRAPE & TREE FRUIT LEAGUE
TO THE
SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY
OF THE
SENATE COMMITTEE ON JUDICIARY
PRESENTED BY THOMAS J. HALE, PRESIDENT
FEBRUARY 24, 1983

The California Grape & Tree Fruit League is a voluntary membership organization that represents growers and shippers of fresh grapes, peaches, pears, plums, nectarines, cherries and other deciduous fruits that are produced in California and Arizona. The League represents about 85% of the total product grown and shipped from this area.

It is the position of the League that there needs to be an integrated approach to dealing with the problem of illegal immigration into this country -- a program that allows those who have resided in the United States for some time to remain under a legal status; that allows modification of the existing program to admit, under section 101(a)(15)(H)(ii) of the Immigration and Nationality Act, agricultural and non-agricultural foreign workers to perform temporary services or labor; and that also provides for a more flexible foreign worker program that meets the needs of agricultural employers who produce highly seasonal labor intensive perishable crops.

From the agricultural perspective, the key element to the success or failure of the immigration policy is the implrementation of a workable program to admit alien workers to the United States on a seasonal basis.

According to Leonel Castillo, former Commissioner of the U.S. Immigration and Naturalization Service, "The U.S. is experiencing the world's largest temporary worker program larger even than the guestworker programs of Switzerland, France, Holland and Germany. Only ours is unregulated...(resulting) in the Immigration Service having to arrest over a million persons annually...whose crime is that they want to work in this country."

Economic factors will continue to propel immigrants to the United States, within a legal program, if available (and illegally, if not). Any program for dealing with immigration must take into consideration the tremendous drawing power of the United States. The Select Commission on Immigration and Refugee Policy pointed out that all studies indicate that undocumented/illegal aliens are attracted to this country by U.S. employment opportunities. Most come from countries that have high rates of under- and unemployment. As was pointed out by Carey McWilliams, in the book North from Mexico, "The issue has always turned on the choice between planned migration and unplanned immigration, for it is extremely debatable whether, under any circumstances, Mexican workers can be kept from crossing the border. Given the attraction of industrial employment in the United States and the ease with which the border can be crossed, Mexicans will continue to follow the old familiar paths which lead north from Mexico."

Any immigration policy must recognize these natural forces when attempting to balance reasonable controls against the need for foreign workers in the U.S. economy. The correct equation to be reached is one that allows just enough legal use of non-immigrant aliens to meet the bona fide need of U.S. producers for foreign workers. A program that is too relaxed will have no effect on stemming the flow of undocumented workers, while one too restrictive will work to drive the flow further underground, with attendant abuses of employers and employees. Neither is satisfactory. We must be cognizant of the fact that a supplemental foreign agricultural and non-agricultural workforce will continue to be needed in several industries.

The League believes that the needed agriculural workforce can be provided by a modified H-2 program and a complimentary seasonal foreign worker program.

THE H-2 PROGRAM

S. 529 attempts to provide a program to admit aliens to perform services or labor, under section 101(a)(15)(H)(ii) of the Immigration and Nationality Act. There is a separate treatment for agricultural and non-agricultural labor, of which we are supportive. For agricultural employment, the provisions fall short of what is needed in the following respects:

1. A workable definition of "labor dispute" should be included. Under the present definition of the Department of Labor and the Immigration and Naturalization Service, any two or more persons at a jobsite can create a labor dispute, thereby foreclosing an employer from being certified from participating in the H-2 program. We instead propose that a labor dispute be deemed to exist when, "at any jobsite, 50% or more of the bona fide agricultural employees of an employer, without coercion, are on strike against that employer or have been locked out by that employer on account of a good faith dispute over wages, hours and working conditions." A labor dispute should be deemed to have terminated when less than the 50% identified above remain on strike, but in no case longer than the employee's term of employment. The use of H-2 workers should only be barred on jobs specifically vacant as a result of the labor dispute.

2. The Attorney General needs to be given the main authority for promulgating regulations, consulting with the Secretary of Agriculture and Secretary of Labor on an equal level. The Attorney General is charged with the responsibility of admitting aliens into the United

States, and is in a more objective position to promulgate reasonable regulations than either DOL or USDA.

3. The adverse effect wage rate should be disallowed as a mechanism for ensuring that the wages and working conditions of U.S. workers are not affected by the admittance of foreign workers. There is no similar mechanism for non-agricultural employers using H-2 workers. In addition, the payment of federal minimum wages, state minimum wages or prevailing wage rates in the area of employment, whichever is highest, will assure no adverse effect on the wages of U.S. workers.

4. The length of stay of an H-2 worker in the United States should be determined by regulation of the Immigration & Naturalization service.

5. An employer should not be required to file a petition for certification for H-2 workers more than 50 days prior to the date of need. Also, the Department of Labor should notify an employer who files for H-2 certification within 7 days of receipt of such request if the certification is denied because of form or substance of the request.

6. Provisions should be included to allow employers to assist workers in making housing arrangements. The requirement for agricultural employers to provide housing should be disallowed, the same as currently provided in the regulations for non-agricultural employers.

These corrections, together with an adequate statutory foundation that the H-2 program is to be liberally construed to allow for a continuing, viable flow of foreign workers, is essential.

Even with these modifications, considerable segments of agriculture are not well suited to the H-2 program. Those farmers who produce highly perishable, labor-intensive crops and who have a large variability in their demand for labor are ill-suited for the highly regimented, inflexible H-2 system. Also, those located in areas producing many crops and varieties of each crop (each with its own cultural and harvesting requirements), and in areas involving numerous producers, are similarly incapable of utilizing the H-2 program without major disruptions to production and important losses of food crops.

Consider, for example, the swelling demand for labor in the cherry industry, where labor requirements rise from a level of 4.5 man hours per acre in the month of March to a peak of 316 man hours per acre during the harvest period of May to June. This meteoric rise in the demand for labor is followed by a correspondingly dramatic drop in demand, as only about two man hours per acre are required in the month of July.
Because of the perishability of many agricultural commodities and the whims of nature, agricultural employers often do not have the option of hiring smaller crews of workers over a longer period of time. Harvest time demands immediate attention to avoid crop loss. Because many domestic workers are unwilling or unable to accept employment for such short periods of time, a supplemental seasonal workforce, usually including undocumented workers, has filled the gap. These workers have established work patterns that may involve local or regional migration; they rely on a developed intelligence system in deciding who to work for, the work to perform and the timing for seeking job opportunities.

There are no legal restrictions on who to work for or when to quit; there is a regular tendency for those possessing skills to locate employers who require those skills. This all occurs without formal work orders, government involved screening and recruitment procedures, or mandated employer-employee relationships.

The League supports maintaining such a system under a legal framework -- one that is flexible and responsive to meet the need of many agricultural producers. This system would be complementary to, and not a replacement of, the H-2 program.

ELEMENTS OF THE SEASONAL FOREIGN WORKER PROGRAM

In order to meet the needs for labor in the production of highly perishable food commodities, the League recommends adoption of a seasonal foreign worker program that provides:

- for the establishment of a non-immigrant category for seasonal foreign workers who have no intention of abandoning their residence in a foreign country, who are nationals of the foreign country, and who are coming to the United States for a period not to exceed 11 consecutive months to perform seasonal agricultural labor.
- the Attorney General, in consultation with the Secretary of Agriculture and the Secretary of Labor, shall by regulation establish a program for admission into the United States of these non-immigrants. Such program shall include the imposition of monthly and annual numerical limitations applicable to the issuance of non-immigrant visas, based on the number of workers identified by agricultural employers. The non-immigrant visas shall be made available in accordance with a preference system.
- the non-immigrant visa issued to any alien under this program shall not limit the type of agricultural employment to be performed, or limit the alien's selection of agricultural employers.
- the aliens admitted into the United States periodically to perform agricultural labor must be continuously employeed or actively seeking employment in accordance with usual and customary employment patterns and practices.
- an agricultural employer who employs these non-immigrant aliens shall have the responsibility of recruiting, in the area of intended employment, willing and qualified

domestic workers that will be available at the time and place needed, and shall accept for employment willing and qualified domestic agricultural workers who apply or are referred to the employer.

- agricultural employers shall timely apply to the Attorney General for authority to employ foreign agricultural workers admitted into the United States.
- the Attorney General shall provide an expedited procedure for review of the applications and statements filed by agricultural employers, and determine:
  - (a) the total numerical need for seasonal agricultural workers and the time such workers are needed,
  - (b) the estimated availability of willing and qualified domestic agricultural workers who will be available at the time and at the place needed in the area of production to perform agricultural labor,
  - (c) the numerical limitations and the period of need for seasonal agricultural foreign workers, based on historical agricultural employment patterns, availability of domestic workers, and the projected labor needs of prospective agricultural employers.
  - (d) a plan for admittance of aliens into the United States, in accordance with a preference for willing and qualified individuals.
- agricultural employers should not be required to furnish housing that is not presently available or offered to domestic employees, nor required of non-agricultural employers under the H-2 program.
- the Attorney General shall approve and endorse the petitions. After receipt of the endorsed petitions, the consular officer will issue non-immigrant visas to the requisite number of aliens. Such visas shall bear a special symbol, and identify the date on which the alien is to return to his/her home country.
- no alien admitted for this seasonal foreign worker program shall be eligible for any financial assistance under Federal law.
- agricultural employers of non-immigrant aliens admitted under this program shall pay into a fund the employee portion of social security taxes and the federally mandated portion of the unemployment insurance tax. Such sums shall be retained in order to ensure the alien's maintenance of the status under which he/she was admitted and his/her timely departure from the United States, and shall be paid in a lump sum to the alien if it is demonstrated that the alien has participated in the seasonal foreign worker program, has not violated any provision of the program, and has no intention of abandoning his residence in his home country. The payment shall be made only at the consulate of the United States in the labor source country which is nearest ot the residence of the alien.
- the Attorney General may impose reasonable penalties for violations up to and including removing for a period of five years the employer's authority to employ seasonal foreign workers under this program.

Violations include any of the following acts of the employer:

(a) employment of foreign agricultural workers under section 101(a)(15)(H)(ii).

(b) employing a foreign agricultural worker for a job opportunity made vacant as a result of a labor dispute.

(c) failure to hire willing and qualified domestic workers that are available at the time and at the place of need.

(d) knowingly discriminating against domestic employees.

(e) knowingly hiring illegal aliens.

* It shall be unlawful for anyone to knowingly hire or recruit an alien admitted to the United States under this program unless he/she has received the proper authority. Anyone violating this provision shall be subject to civil and criminal penalties.

* the employer portion of social security taxes shall be maintained in a separate fund from which shall be paid to the Attorney General amounts to cover reasonable costs of administration and enforcement of the seasonal agricultural foreign worker program.

LEGALIZATION

Title III of S. 529 provides for adjustment of illegal alien status to that of a person admitted for temporary or permanent residence. The League is supportive of these provisions. We would, however, encourage that requirements for continuous residency necessary to qualify for legal status be based on a reasonable definition of what is "continuous." The legalization process is intended to avoid major disruption in the lives of those who have resided in the United States, and a conservative construction of what is "continuous" would defeat the intent of this provision for farmworkers, who generally return to their home country during periods of low employment.

EMPLOYER SANCTIONS

The League does not oppose reasonable sanctions against employers who knowingly and willfully hire illegal aliens provided:

(a) there is guaranteed an adequate supply of foreign agricultural workers,

(b) there is even enforcement, and safeguards to protect against selective enforcement. In this regard, we urge that the S. 529 bill be amended to incorporate the requirement for a properly executed search warrant prior to enforcement officials entering a farm or other agricultural operation.

(c) there exists a simple, reliable means of worker identification that doesn't burden the employer to determine authenticity.

(d) there exists a requirement that any person or other entity that refers workers be responsible for establishing legal status of workers, record keeping and be subject to the same sanctions as employers.

We appreciate the opportunity to present our views and recommendations to this subcommittee. We ask your careful consideration of this testimony and adoption of an immigration program described herein -- one that will provide a workable system to gain control of our national borders, as well as provide the needed seasonal foreign workforce that will enable continuous production of vital foodstuffs for this country.

COMMITTEE OF CONCERNED E.E.s
to
U.S. SENATE SUBCOMMITTEE ON IMMIGRATION

26 February, 1983

The Committee of Concerned E.E.s is a organization of about 3,000 American working electrical and electronics engineers. The word "working" is used to differentiate this group from the usual group of engineers who speak to Congressional and Senate Committees - the academics and the corporate executives. We working Americans are very interested in closing some of the loopholes that have made engineering an unattractive career choice for many of this nation's young people.

The sad fact is that, despite widely publicized press comment about a "shortage" of engineers, the salaries of the American engineering community have been going down (!!!) when measured in terms of constant dollars. And they have been going down since 1969. How can this indicate a shortage?

Thus, this report is an attempt to assist this Subcommittee in its important work.

I -- INTRODUCTION

The commonly accepted wisdom is that the Subcommittee has "done its homework" by enlisting various segments of the American public in the effort to update and re-codify this nation's Immigration laws. We submit that there is much more that needs to be done, given the unsatisfactory experience that the Bill proposed during the last session of Congress had in the House and on the Senate floor.

It is the purpose of this report to point out additional areas of support that may be enlisted in the effort.

IN GENERAL, THIS ADDITIONAL SUPPORT CAN COME FROM AMERICAN WORKING PROFESSIONALS, A GROUP THAT MAY HAVE BEEN OVERLOOKED DURING LAST YEAR'S HEARINGS. IF PROPERLY ADDRESSED, THIS SEGMENT MAY PROVIDE POWERFUL INPUTS.

II -- DEPARTMENT OF STATE

On December 11, 1981, one of the speakers at the morning session of the Subcommittee was a Mr. Scully, of the U.S. Department of State. Mr. Scully heads that division of State that is in charge of issuing student visas. But he was let off the hook too easily, for a requirement for the issuance of a student visa is that it must first be determined that there are career opportunities, in the prospective student's native country, for the skills that he/she will acquire as a result of studying in the United States.

YET, THIS REQUIREMENT IS NOT MET. IT IS RARE FOR A FOREIGN SERVICE EMPLOYEE OF THE STATE DEPARTMENT TO INVESTIGATE THE JOB OPENINGS IN ENGINEERING, ACCOUNTING, PHARMACY (TO CHOOSE AN EXAMPLE NOT QUITE AT RANDOM), AND THE OTHER PROFESSIONS.

It would be interesting to recall Mr. Scully to determine how many job openings there are for electronics engineers in Pakistan, in India, in Mali, etc. It would then be interestiing to compare his figures with the number of students from these (and other) countries who are studying these disciplines in the United States.

The purpose of this inquiry is, of course, to show that the State Department's policy of unlimited issuance of student visas actually encourages foreign students to remain in this country after graduation. Sadly, what will also emerge is that the State Department has not done its job.

III -- U.S. DEPARTMENT OF LABOR

The existing law requires that before a former foreign student is permitted to change his/her status, a job must be offered. To ensure that the job is offered to the alien at the "going wage", the U.S. Department of Labor is supposed to ensure that the wage is fair. THE CURRENT REQUIREMENT IS THAT THE LOCAL OFFICE OF THE STATE LABOR DEPARTMENT IS SUPPOSED TO CONDUCT AN AREA SALARY SURVEY TO DETERMINE IF THE WAGE OFFERED TO THE ALIEN IS REPRESENTATIVE OF THE WAGES PAID TO AMERICANS IN THE AREA POSSESSING COMPARABLE SKILLS AND WORKING IN A COMPARABLE ASSIGNMENT.

Yet, this requirement is seldom fulfilled.

Mr. Aaron Bodin, of the U.S. Department of Labor has consistently refused to accept salary data supplied by the Institute of Electrical and Electronics Engineers to support the contention that aliens work for wages about 2/3 of those paid to their American counterparts. Others within USDOL who are congizant are Mr. Dennis Gruskin (202/376-6962) and Ms. Maureen Cronin (202/376-6518).

It should be noted that at least one other professional organization supplies salary data to USDOL which is accepted. This is the Association of Tennis Professionals, in Harrison, Tennessee. For years, USDOL has routinely accepted the salary figures supplied to them by ATP.

The Committee of Concerned EEs can supply many examples wherein salaries for advertised positions are about 1/2 to 2/3 of those commanded by Americans. Some of the State Employment Offices that advertised for these positions (hoping that, since no American would accept a position for the advertised low salary, the job could then be offered to the alien - the intent all along) are in Indiana, Mississippi, Ohio, California, Minnesota, and Texas.

It might be fruitful to call some people from these agencies to determine the job description and the salary commanded by these exploited aliens.

IV -- IMMIGRATION AND NATURALIZATION SERVICE

We have previously described the workings of the dodge whereby foreign students exchange their student visas for resident visas. But there is another avenue for the "back door" entry into the United States, and this falls within the purview of the Immigration and Naturalization Service. It is possible to directly import foreign engineering and scientific personnel by claiming that they are "persons of exceptional merit in the sciences". Indeed, it was under this provision that Enrico Fermi and Albert Einstein were admitted into the United States. We can be grateful for this provision.

But recently, INS has determined that engineering and scientific personnel possessing a mere Bachelors degree fall under this category. THE RESULT HAS BEEN TO ADMIT HORDES OF POORLY TRAINED SCIENTISTS AND ENGINEERS WHO DO NOT HAVE A GOOD COMMAND OF THE ENGLISH LANGUAGE AND WHO WORK FOR SALARIES A FRACTION OF WHAT THEIR AMERICAN COUNTERPARTS COMMAND.

It would be instructive to call Mr. Nelson (the Acting Commissioner of INS) to determine some precise figures. Do not be surprised if none are available.

V -- IMMIGRATION ATTORNEYS

Unhappily, a thriving specialty in law has emerged as a result of the complexities and loopholes in the existing Immigration regulations. Would it be proper for ths Subcommittee to call some such attorneys?

I know of two: Mr. Serviss and Mr. Damon Spilios.

Mr. Serviss advertises himself as a consultant to this Subcommittee and has given many Technical Seminars, under the sponsorship of the American Management Association, on how to bring into this country foreign engineers.

Mr. Spilios is an attorney in Miami, Florida. I met with him in the Fall of 1982 while we both were in Bangkok, Thailand. Spilios had placed an advertisement in the International Herald Tribune. We met in the bar of Bangkok's Oriental Hotel and I convinced him that I was a representative of an unnamed American company that was interested in importing engineers. Mr. Spilios' comments were interesting. Since I also publish a monthly newsletter, I have my reporter's notes about our conversation. In addition, the story was covered by a trade newspaper, Electronic Engineering Times. You might wish to contact Ms. Carole Patton (516/365-4600) about her write-up of my adventures with Mr. Spilios. Spilios indicated to me that the principal aim of an advertisement was to try to hire an American for the opening and "hope we don't find one." This is accomplished, of course, by having the advertisement offer a low salary.

THE PROBLEMS ASSOCIATED WITH ELICITING TESTIMONY FROM ATTORNEYS WHO MAY BE COLLEAGUES ARE RECOGNIZED; NEVERTHELESS, IT IS IMPORTANT TO ESTABLISH THE VARIOUS RUSES THAT ARE USED TO LOWER THE INCOME OF AMERICA'S PROFESSIONALS.

VI -- MOSTEK

Mostek is the name of a semiconductor company in Carrolton, Texas that was caught red-handed in an attempt to hire foreign engineers. The case may still be going on. In its broad outline, several foreign engineers, formerly employed by Mostek were deported after it had been determined that they were working illegally at Mostek. Ms. Carole Patton, of Electronic Engineering Times, (516/365-4600) has been following this story and she will doubtlessly be able to supply you with addtional details.

THUS, FOR THE FIRST TIME, THERE IS CLEAR EVIDENCE (IN A LEGAL SENSE) OF THE ATTEMPT BY SOME UNETHICAL CORPORATIONS TO FILL THEIR ENGINEERING NEEDS USING LOWER PAID FOREIGN LABOR. Of course, this hurts American engineers and makes engineering unattractive to America's young people.

VII -- COLLEGES THAT RECRUIT

Given the end of the World War II baby boom, given the unprecedented expansion of American colleges, it is natural that many colleges are now attempting to fill their empty classrooms with foreign students. Yet is this desirable? The cost of a college education is not covered by tuition, and it is the American taxpayer who pays for much of it. This is certainly true in the public colleges, but it is also true, to a lesser extent, in the private colleges.

There are more than 320,000 foreign students in this country now. If we conservatively estimate that the annual cost for their education exceeds the tuition cost by $3,000 per student, then the bill that the American taxpayer is required to pay is MORE THAT $1 BILLION EACH YEAR!!!!!

Is it not time to reduce the load on the American taxpayer by insisting that America's universities shrink to support the reduced population of American college students? As an alternative, why not insist that foreign students pay the full cost (not merely the full tuition) of their college education?

A college that has an active foreign recruiting program is the University of Southern California. It would be helpful to the work of this Subcommittee to determine, from an official of USC, the precise numbers involved, the total cost to USC of this program, the total income to USC that results from this program, and (the shame of it all) the net profit to USC from its overseas recruting program. In this way, the less-than-pure motives of the academic establishment can be shown.

VIII -- THE BURDEN OF SOME LOCAL SCHOOL SYSTEMS

Some areas of this country are afflicted with enormous costs brought about by the education of illegal aliens or their children. One such is Los Angeles. It seems wise to obtain some figures about this from cognizant officials of the Los Angeles School Board about this. Be certain that these figures represent the inner city (East Los Angeles) and not some affluent suburb.

In this way, the burden to the middle class taxpayer can be made clear.

IX -- THE ROLE OF AMERICA'S BLACKS

Perhaps the greatest failure of last session's hearings on the Immigration bill was not to emphasize the stake that America's blacks have in reducing the loopholes that many non-blacks have used to gain admittance to this country. Indeed, during the mass migration of Cubans into Florida some years ago, it was the South Florida branch of the NAACP that was vocal in its opposition. This group rightly foresaw that such immigration would limit the economic opportunities for its constituency. THUS, IT IS RECOMMENDED THAT A GREAT EFFORT BE MADE TO SOLICIT TESTIMONY FROM REPRESENTATIVES OF AMERICA'S BLACK POPULATION.

In the engineering field, a half-hearted effort has been made to bring bright black young people into the engineering field. This is being done by an organization called the Minority Engineering Education Effort (345 East 47 Street, New York, NY 10017). Unhappily, given the many layoffs of engineers, their efforts are thwarted by the wholesale recruitment of foreign engineers, either directly or through the exchange of a student visa.

TESTIMONY FROM BLACK ORGANIZATIONS ABOUT THE IMPACT OF CONTINUED IMMIGRATION OF FOREIGN ENGINEERING AND SCIENTIFIC PERSONNEL WOULD DO MUCH TO DEFUSE SOME OPPOSITION. This is because it is the aim of many black organizations to elevate Black Americans into the middle class. The presence of a large number of foreign professionals inhibits this upward social mobility that is so characteristic of American life.

X -- ORGANIZED LABOR

Organized labor also has a large stake in illegal aliens, who typically work for sub-standard wages. In particular, Mr. Sol Chaiken, the head of the International Ladies Garment Workers Union (ILGWU) has stated, on public television, that his union is trying very hard to eliminate the sweatshops that are prevalent in New York City's Chinatown. His statement can only be helpful, and this would also help to defuse some opposition to the forthcoming Immigration bill.

XI -- WAGES COMMANDED BY FOREIGN PROFESSIONALS

This is a difficult topic to address, since so few statistics are kept by the hierarchies of the professional societies. THE BIG DANGER IN TRYING TO OBTAIN SUCH TESTIMONY IS THAT THE SUB-COMMITTEE WILL FALL INTO THE TRAP OF CALLING MEMBERS OF THE HIERARCHY OF THESE SOCIETIES.

It is important to remember that, in most cases, the members of the hierarchies represent either the corporate interests or the academic interests. Both of these have a vested interest in permitting foreign professionals to obtain entry into the United States.

THUS, IT IS RECOMMENDED THAT EFFORTS BE MADE TO LOCATE REPRESENTATIVES OF DISSIDENT FACTIONS WITHIN THESE SOCIETIES. IN THIS WAY, THE PRACTITIONERS (AS DISTINCT FROM THE HIERARCHIES) WILL BE HEARD.

The American Institute of Chemical Engineers has (at least in the past) compiled figures about the relative incomes of American members of AIChE and foreign members who reside in America and who are also members of AIChE. Their address is 345 East 47 Street, New York, NY 10017.

NAFSA
National Association for Foreign Student Affairs
1860 19th St., N.W., Washington, D.C. 20009

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Field Service Program	202/232-1312
Cooperative Projects Program	202/332-3735
NAFSA/A.I.D. Project	202/462-4814

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Richard Reiff
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EXECUTIVE VICE PRESIDENT
John F. Reichard

February 24, 1983

The Honorable Alan K. Simpson
Chairman
Senate Subcommittee on Immigration and
Refugee Policy
A-509 Annex
Old Immigration Building
119 D Street, N.E.
Washington, D.C. 20510

Dear Sen. Simpson:

I am pleased to forward to you testimony of the National Association for Foreign Student Affairs on provisions in S. 529 which the nearly 5000 institutional and individual members of the association believe would profoundly affect the course of U.S. international educational exchange activities.

Because international educational exchange is so increasingly important to the educational, economic and political interests of this nation, NAFSAns support all reasonable immigration law and regulation designed to meet and harmonize the complex objectives of the participants in exchanges: U.S. colleges and universities, the developing institutions of other nations and the exchangees themselves. To meet this difficult challenge, we must look to the U.S. government to provide systematic and comprehensive data on U.S. exchange activities so that we can plan such programs on the basis of educational fact rather than popular impression, to establish acceptable standards for U.S. colleges and universities which admit foreign students so that the principal and mainstream international educational activities are not penalized because some institutions of higher education do not observe responsible practices and to reconcile the broad interests of the federal government in international education, including the interests of Congress, USIA, and the Departments of State, Education and Labor.

We wish you and your colleagues success in addressing an issue of enormous importance to the nation.

Sincerely,

John F. Reichard
Executive Vice President

JFR/elv

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National Association for Foreign Student Affairs

a position paper prepared for the NAFSA leadership in interpreting the implications for international education exchange of federal immigration legislation expected to be reintroduced in the 98th Congress. The paper has been prepared by Eugene H. Smith, University of Colorado, in consultation with officers of the Association, members of NAFSA's Government Regulations Advisory Committee and the Executive Vice President.

HIGHER EDUCATION AND IMMIGRATION REFORM

The Simpson-Mazzoli immigration reform bills and their successors about to be introduced in the 98th Congress contain several specific provisions of great concern to higher education and to international education. This paper is an attempt to analyze some of those concerns, to examine Congressional attitudes toward them, and to suggest alternative approaches to achieve mutually agreeable goals.

Concerns of the Higher Education Community

The higher education community and proponents of international education are principally concerned about three specific provisions of the original Simpson-Mazzoli legislation, some of which have been modified by amendments in the bills which will be introduced in the present Congress. These provisions are (1) the proposed application of the two-year home country residence requirement of Section 212(e) of the Immigration and Nationality Act to all students who hold F or M classification; (2) the more restrictive language limiting access to the highest occupational preference for immigration; and (3) the proposed elimination of special status for college and university teachers from the labor certification requirements. All of these provisions have been amended variously in the two houses of Congress, but all are still present in some form in the new versions of the legislation.

Concerns of Congress

The sponsors of the legislation have apparently included these provisions in the bills because of the legitimate concerns of Congress to limit the number of legal aliens who would take jobs otherwise available to American workers and to control the "brain drain" from developing countries. These concerns must be blended into the opposing and delicately balanced more general concerns to limit U.S. population growth on the one hand and to provide adequately for needed manpower and to unify families on the other hand. Seen in the context of these overall purposes of immigration legislation, the matters of concern to higher education may seem to the sponsors of the legislation to be minor; to the higher education community and particularly to the participants in international educational interchange they are highly important, as they directly affect the success and effectiveness of all of our efforts.

Misconceptions of the Sponsors of the Legislation

The restrictive provisions of the legislation appear to be based on three misconceptions or belief in faulty information:

1. "Foreign students don't go home." Sponsors of the legislation appear to believe that most foreign students don't go home, but that they remain in the United States, adjust their status to that of permanent

residents, and thereby contribute to the brain drain in developing countries and to the undesirable growth of the work force in the United States. While current facts and figures are unavailable, we do have facts from as late as 1979 in the 1979 Statistical Yearbook of the Immigration and Naturalization Service. Table 6C on page 12 of that report (attachment 1) shows that only 14,728 students adjusted status in 1979. Table 16 on page 42 of that same report (attachment 2) shows that 106,977 students were admitted to the United States that same year. Open Doors 1978/79 (page 1, attachment 3) shows a total of 263,938 foreign students in U.S. higher education in the United States in that year. The latter two figures can be misleading, as the former includes re-entries and the latter includes some persons in classifications other than F student, but a comparison of the figures shows conclusively that only a very small proportion of students were adjusting status and failing to go home in 1979. In this example, probably something in the nature of 15% of the number of students who entered the U.S. in that year and 5½% of all foreign students in the U.S. adjusted status. That is certainly not a high enough proportion to justify the extreme measure of requiring all foreign students to go home regardless of considerations of their personal circumstances, the need for them at home, or the need for their services in the United States.

2. "Legal aliens take jobs which Americans should have." This is certainly true of illegal aliens, but only to a limited degree of legal aliens, and only in the cases of those who become legal aliens through the family unification provisions of the Immigration and Nationality Act. The occupational preference system and the labor certification provisions adequately protect the job market for Americans against those aliens who are admitted for the purpose of taking jobs, and those provisions are designed to select for immigration those aliens whose particular skills and abilities are needed in the United States. The legitimate desire to unify families must be balanced against the equally legitimate desire to protect jobs for Americans. Those provisions of the law are not affected by the provisions of the legislation about which higher education is concerned.

3. "Higher education should not be dependent upon foreign sources for its faculty." Higher education must seek out and hire the best qualified persons available, regardless of their origins. Higher education is and always has been an international enterprise, with scholars crossing national boundaries freely to stimulate and enrich the educational experience of their students and colleagues. Higher education can never be independent of foreign sources, for to do so would be to become isolated and to be left behind in the advance of knowledge. Higher education is properly interdependent with all nations of the world and must always encourage the free flow of knowledge and of scholars in order to remain vital and dynamic. In this sense, U.S. higher education can and should never end its dependency on foreign scholars to fill its faculty ranks.

While there is some truth in all of these stated misconceptions, their dimensions have been grossly exaggerated by the use of faulty impressions or groundless assumptions. Dependence on these misconceptions has led the sponsors of this legislation to attempt to solve a non-problem in ways which would actually be destructive of the national interest.

The Two-Year Home Country Residence Requirement Applied to all F and M Students

The application of the two-year home country residence requirement to all F and M students, as proposed by the sponsors of this legislation, is indiscriminate and non-selective. The suggested amendments to allow a limited number of such students in selected fields to obtain waivers of the requirement do not address the problem (if there is one) directly and do not eliminate the inequities of the proposed all-inclusive rule.

In 1955 Congress applied the two-year home country residence requirement to all aliens classified as J Exchange Visitors. Within a decade, it became apparent that such a broad application of the requirement was neither necessary nor desirable. Congress responded by changing the law in 1965 to apply that residence requirement selectively only to those Exchange Visitors who were financed by the U.S. government or their own government and to persons from developing countries whose skills were particularly needed there (as determined by the Exchange Visitor Skills List). Later Congress also applied the requirement to Exchange Visitor foreign medical graduates who come to the U.S. for graduate medical education and training. Congress wisely looked at the experience of ten years from 1955 to 1965 and changed the law so that it served its original intent. Now Congress proposes to apply this same two-year home country residence requirement to all F and M students, regardless of their source of support, regardless of the need or lack of need for their services in their home countries, and regardless of the experience of the past.

The legislation also seems to ignore the elementary problems that would be created in attempting to administer this requirement. The Immigration and Naturalization Service, the U.S. Information Agency, and other government agencies involved in the limited number of waivers for the present Exchange Visitors spend inordinate amounts of time and energy in making decisions on waiver requests now. Currently a waiver application requires anywhere from four months to a year or more for a decision. Consider the enormous number of waiver requests which would be filed under the proposed legislation. The mind boggles at the bureaucracy which would have to be created to handle these waivers. The problems would be even more exacerbated by the fact that, under the legislation as amended, two kinds of waivers would be possible: those under the present Section 212(e) (that is, interested government agency, hardship, persecution, and no-objection statement) and those under the special waivers for a limited number of persons in specified fields. Finally, the legislation would create the anomalous situation of applying the return home requirement only selectively to Exchange Visitors, who are presumably here for an exchange purpose and who might be expected to have some restrictions placed on them, while applying it universally to F and M students, who come here for a variety of reasons and with a variety of sponsorship or support. One side result would likely be a rush of students from the F (if not the M) classification to the J Exchange Visitor classification so that the two-year home country residence requirement would not apply to them.

The labor certification procedures and the preference system already regulate and control the number and kinds of persons who can become permanent residents of the United States. There is no need to impose the additional and unselective control of applying a two-year home country residence requirement to all F and M students. This proposed requirement is an attempt to solve a non-problem through measures which are overly restrictive, impossible of efficient administration and enforcement, and destructive of the national interest.

If these arguments are not persuasive enough, and if the Congress insists upon imposing additional restrictions upon the opportunity of foreign students to adjust status, those restrictions should be applied selectively, with reason and logic. There may be some justification for applying the two-year home country residence requirement to the same kinds of students as it is applied to Exchange Visitors - that is, to those who are supported in whole or part, directly or indirectly, by the U.S. government or their home governments; to those whose skills are needed in their developing countries; and to those who come to the United States for graduate medical education or training (although all of the latter are now required to hold J Exchange Visitor status). Application of this requirement to those categories of students would solve any problems related to the brain drain from developing countries and would enforce obligations undertaken by students who are supported by sponsors for a specific purpose involving a return home. Real or perceived problems related to the labor market are now and can in the future be more reasonably and equitably solved by the application of the labor certification requirements and the preference system.

In considering the possible application of a home country residence requirement on students, Congress should recognize that most foreign students come to the United States not as participants in sponsored and organized exchange programs which involve their return home, but as privately supported and independent students who have their own personal objectives. Open Doors 1980/81 states that 67.4% of foreign students in higher education are financed by their personal or family resources. Many of the remaining 32.6% are supported by means which also do not involve their required return home. To assume that all foreign students in the United States have undertaken or should undertake an obligation to return home is to assume from faulty premises.

Congress should also recognize that American colleges and universities accept and welcome foreign students for a variety of reasons, not only to train manpower for needs abroad (although that is an important reason). Our institutions of higher education welcome foreign students to enrich the educational experience of American students and faculty, to bring educational and cultural benefits to our campuses and communities, to enhance the nation's balance of trade position through the "export" of education, to assist our graduate academic departments to continue programs of graduate education and research despite a temporary dearth of U.S. students, to train persons for American needs in specialized areas, and to enhance international scholarly and scientific collaboration. All of these objectives would be hampered by imposition of a two-year home country residence requirement indiscriminately to all F and M students.

Congress should also recognize that our national interests and even international interests are sometimes best served by students who remain in the United States or go to some country other than their own where their talents and abilities can best serve the needs of mankind. Why should we require all students from Taiwan, for example, to return to their country, where they cannot possibly be absorbed into the economy or educational system? (The Taiwan Ministry of Education estimates that 90% of its students who go abroad do not return home, and they are not concerned about that because they can't possibly use them all.) Should we require a student from Afghanistan to return home to a country dominated by a foreign power and lacking any opportunity for an educated person to have an impact on his country? Should we require all students from Iran to return to a country where current social and religious practices severely limit their ability to make use of their education and training? Should we require a highly specialized scientist to return to a European country which may not be able to employ him or make use of his scientific abilities? Or is it wiser for us to recognize that persons must be treated as individuals and be allowed at least a certain degree of choice in their intended place of residence, assuming that they have not undertaken a previous obligation to return home? Clearly, some selectivity in applying return home requirements is much wiser than broadly applying such requirements to all foreign students regardless of their other obligations, their personal safety and welfare, and the best use of their talents and abilities.

If a two-year residence requirement is perceived to be necessary, it should be applied selectively so that it applies to those who have undertaken an obligation to return home as part of their educational program, to those whose skills are needed in their developing countries, and to those who would best serve our national and international interests by returning home. Such selective application would obviate any problems of the brain drain. The problems of employment in the United States are best solved by relying on the labor certification and preference systems.

Conclusion

Congress should recognize that applying the two-year home country residence requirement to all F and M students would create much greater problems than are purported to be solved. The number of students who now adjust status is not so large that it should call for such measures. Preferably, that provision should be dropped from the current immigration reform bills. If it is not possible to eliminate it, the bills should be amended so that the two-year home country residence requirement applies only selectively to those persons who should reasonably be expected to return home.

Congress should also recognize that America needs some highly trained aliens to meet manpower needs which cannot be satisfied by American workers. Specifically, U.S. higher education needs and will continue to need a continuing flow of foreign faculty members and researchers to maintain our position of leadership in the international community of scholarship and to provide the best possible education and training for our own students. Therefore, Congress should not limit the ability of educational institutions to employ highly qualified aliens for faculty and research positions. Specifically, potential faculty members and researchers should be clearly included in the highest occupational preference category and sufficient visa numbers should be available to meet the proven needs of higher education. The present labor certification language should be retained and extended so that colleges and universities can obtain labor certification for the best qualified faculty members and researchers regardless of the availability of lesser qualified American applicants.

Higher education recognizes the need to compromise and to consider all aspects of the national interest. We believe that the suggestions put forth in this paper do recognize those needs and do fit well into the delicate balance of limiting population growth and providing for needed manpower. We ask for their serious consideration and for close attention to the needs expressed.

February, 1983

TABLE 6C.
ALIENS WHO WERE ADJUSTED TO PERMANENT RESIDENT STATUS IN THE UNITED STATES UNDER SECTION 245, IMMIGRATION AND NATIONALITY ACT, BY STATUS AT ENTRY AND COUNTRY OR REGION OF BIRTH
YEAR ENDED SEPTEMBER 30, 1979

COUNTRY OR REGION OF BIRTH	TOTAL ADJUSTED	STATUS AT ENTRY															
		FOREIGN GOVERNMENT OFFICIALS	TEMPORARY VISITORS FOR BUSINESS	TEMPORARY VISITORS FOR PLEASURE	TRANSIT ALIENS	TREATY TRADERS & INVESTORS	STUDENTS	SPOUSES & CHILDREN OF STUDENTS	INTERNATIONAL REPRESENTATIVES	TEMPORARY WORKERS & TRAINEES	REPRESENTATIVES OF FOREIGN INFORMATION MEDIA	EXCHANGE VISITORS	SPOUSES & CHILDREN OF EXCHANGE VISITORS	NATO OFFICIALS	U.S. CITIZENSHIP CLAIMED	PAROLEES	ALL OTHERS
ALL COUNTRIES ...	91,630	951	2,306	55,409	220	1,305	14,726	1,258	696	3,302	27	1,333	748	1	6	3,071	6,139
EUROPE	17,790	107	309	11,692	12	565	920	94	90	449	5	324	165	1	-	864	2,122
AUSTRIA	194	-	7	92	-	3	12	1	1	8	-	4	1	-	-	13	16
CZECHOSLOVAKIA	181	-	2	117	-	-	4	-	-	3	-	4	12	-	-	20	19
DENMARK	174	5	5	73	-	23	2	-	7	11	-	6	6	-	-	15	23
FRANCE	801	9	19	496	-	28	71	2	8	16	-	28	7	-	-	31	86
GERMANY	1,812	5	36	1,157	1	177	96	6	7	32	-	38	20	-	-	64	175
GREECE	844	5	9	580	4	11	186	7	8	8	-	2	-	-	-	17	7
HUNGARY	295	-	5	240	-	-	-	-	-	9	-	6	3	-	-	19	6
IRELAND	414	-	5	296	-	5	11	-	1	24	-	10	1	-	-	15	46
ITALY	1,609	11	22	1,309	1	61	50	1	9	9	-	6	3	-	-	48	99
NETHERLANDS	565	2	15	268	-	28	48	1	6	7	-	15	9	-	-	32	142
POLAND	1,660	1	8	1,559	4	6	20	-	-	7	-	8	2	-	-	17	28
PORTUGAL	646	4	8	545	-	1	38	-	5	-	-	2	-	-	-	29	12
ROMANIA	329	4	9	228	-	3	18	3	1	4	-	8	7	-	-	36	14
SPAIN	602	6	22	416	-	-	28	2	12	46	-	3	4	-	-	41	22
SWEDEN	380	2	13	218	-	-	19	-	6	8	1	13	3	-	-	19	88
SWITZERLAND	285	4	7	159	-	22	26	3	2	8	-	7	10	-	-	7	30
U.S.S.R.	442	1	10	247	-	-	12	3	-	-	-	8	2	-	-	152	7
UNITED KINGDOM	5,118	36	176	2,712	1	174	167	25	14	222	1	118	50	1	-	234	1,178
YUGOSLAVIA	723	1	5	605	1	5	43	-	-	5	-	19	18	-	-	19	8
OTHER EUROPE	727	11	12	382	-	30	77	-	3	20	3	21	6	-	-	36	118
ASIA	31,392	481	1,046	15,072	69	665	8,945	952	159	1,210	7	626	319	-	1	1,080	840
CHINA & TAIWAN	4,224	38	198	1,793	22	94	1,501	257	22	22	1	28	16	-	1	105	126
HONG KONG	925	1	20	230	6	6	577	13	-	10	-	12	1	-	-	27	14
INDIA	2,603	54	56	843	1	19	1,045	236	16	58	-	94	109	-	-	55	57
INDONESIA	296	14	12	120	-	1	87	21	8	-	-	4	2	-	-	9	13
IRAN	5,828	120	98	2,839	-	5	2,499	75	9	4	-	21	16	-	-	106	32
IRAQ	486	3	10	387	10	3	47	-	3	2	-	-	-	-	-	20	1
ISRAEL	1,459	47	41	930	5	14	232	36	4	21	-	21	55	-	-	27	26
JAPAN	1,832	5	68	942	-	240	379	31	1	28	1	16	13	-	-	35	71
JORDAN	722	5	14	378	4	-	288	4	2	4	-	10	1	-	-	10	2
KOREA	1,969	58	208	780	12	226	320	126	9	39	6	13	12	-	-	42	100
LEBANON	1,552	1	33	1,088	-	-	361	3	3	4	-	8	2	-	-	50	21
PHILIPPINES	4,944	84	146	2,670	5	20	133	17	43	994	1	307	52	-	-	265	212
SYRIA	489	3	15	326	1	-	122	2	1	-	-	2	-	-	-	13	4
THAILAND	1,051	2	24	356	-	-	558	62	8	3	-	13	4	-	-	21	18
TURKEY	618	6	14	423	3	4	84	16	4	1	-	14	4	-	-	35	9
VIETNAM	444	-	3	221	-	4	29	8	-	1	-	4	-	-	-	172	2
OTHER ASIA	1,874	40	80	794	2	11	659	65	22	16	-	47	28	-	-	42	85
AFRICA	5,076	29	158	2,275	7	23	1,689	77	49	110	-	108	66	-	-	137	358
EGYPT	754	4	26	562	3	1	72	9	15	15	-	18	2	-	-	14	13
OTHER AFRICA	4,322	25	132	1,713	4	22	1,617	68	34	95	-	90	64	-	-	123	335
OCEANIA	1,579	19	39	980	3	1	206	22	4	45	-	26	16	-	-	61	157
AUSTRALIA	635	16	22	370	2	1	39	-	2	24	-	18	8	-	-	12	121
OTHER OCEANIA	944	3	17	610	1	-	167	22	2	21	-	8	8	-	-	49	36
NORTH AMERICA	26,368	184	327	18,646	84	12	1,070	137	200	1,367	12	114	79	-	5	778	2,307
CANADA	5,359	11	93	2,820	-	6	334	60	9	335	1	60	47	-	4	270	1,299
MEXICO	5,207	13	74	4,539	3	-	221	7	12	52	1	12	10	-	1	126	134
BARBADOS	480	7	4	378	-	-	39	6	6	35	-	-	-	-	-	7	4
CUBA	296	2	3	135	-	1	8	-	8	3	-	-	-	-	-	129	10
DOMINICAN REPUBLIC .	2,123	27	55	1,829	16	1	93	-	32	56	3	1	-	-	-	24	8
HAITI	1,628	27	115	1,290	44	-	76	3	16	18	-	2	1	-	-	64	-
JAMAICA	3,714	50	70	2,824	10	-	255	40	38	316	3	17	11	-	-	33	95
TRINIDAD & TOBAGO ..	830	6	15	596	5	-	126	2	23	18	1	2	3	-	-	18	34
COSTA RICA	575	11	8	495	-	-	36	-	11	4	-	-	-	-	-	12	-
EL SALVADOR	585	6	16	468	-	-	61	-	12	1	-	-	-	-	-	17	12
GUATEMALA	552	9	19	495	-	-	33	-	18	-	-	1	-	-	-	10	7
HONDURAS	720	1	9	588	6	-	90	-	14	2	-	2	3	-	-	7	3
NICARAGUA	694	7	12	578	-	3	81	-	9	2	-	-	-	-	-	7	5
PANAMA	617	3	12	475	1	-	96	4	5	2	2	1	-	-	-	13	9
OTHER NORTH AMERICA.	3,111	4	26	1,329	1	1	328	10	7	948	1	7	4	-	-	39	411
SOUTH AMERICA	9,426	131	227	6,766	45	39	1,089	46	100	121	3	138	107	-	-	223	325
ARGENTINA	1,252	19	38	800	-	38	35	2	32	29	-	38	39	-	-	27	89
BRAZIL	563	16	22	366	2	2	91	7	7	10	-	15	3	-	-	18	33
CHILE	852	13	23	438	8	-	76	9	34	29	-	21	30	-	-	72	102
COLOMBIA	2,297	20	65	1,745	14	-	321	5	27	12	3	14	18	-	-	28	33
ECUADOR	1,006	7	25	907	6	-	73	-	19	4	-	6	-	-	-	13	8
GUYANA	903	16	22	636	8	1	148	12	17	8	-	6	-	-	-	9	6
PERU	1,466	26	12	1,096	5	4	185	5	26	27	-	27	18	-	-	19	26
URUGUAY	259	3	6	185	1	-	15	-	13	1	-	1	-	-	-	60	28
VENEZUELA	395	8	1	262	2	-	75	2	5	1	-	4	1	-	-	21	14
OTHER SOUTH AMERICA.	303	9	11	253	2	-	77	4	9	3	-	3	4	-	-	13	3

1 PART I
OVERVIEW OF FOREIGN STUDY IN THE UNITED STATES

The number of foreign students reported in 1978/79 was 263,938, a 12.1% increase over the 235,509 students reported in 1977/78. As Table 1.0 and Figure 1A indicate, this increase continues a pattern of growth in the foreign student population observed through most of the past twenty-five years.

Table 1.0 and Figure 1A also indicate the total number of institutions which responded to the survey. These show a small increase in the number of institutions responding, from 2,738 to 2,752. This number represents 88% of the 3,127 institutions surveyed and continues the high response rate resulting from the change in survey methodology by the Joint Task Force in 1975. Of the 2,752 institutions responding, 2,504 reported foreign students. A summary of survey response data appears in Appendix 5.

Table 1.1 shows the annual rates of increase for selected years for both the number of foreign students and the number of institutions reporting. This table highlights some of the larger increases in the number of foreign students reported in the past four years as well as the increases in institutional responses in 1975/76 and 1976/77.

While the number of foreign students in the United States continues to grow, their total number still represents a very small fraction of all students in higher education. As Table 1.2 shows, for most of the past twenty-five years, foreign students made up approximately 1.5% of all students enrolled in institutions of higher education as reported by the National Center for Educational Statistics. However, this figure has increased to 2.3% since 1975/76 due to the relative stability of total enrollment figures at a time when foreign student enrollment has continued to grow.

Table 1.0

Foreign Students Reported and Number of Institutions Responding
1954/55—1978/79

Year	Students Reported	Institutions Responding
1954/55	34,232	1,629
1955/56	36,494	1,630
1956/57	40,666	1,734
1957/58	43,391	1,801
1958/59	47,245	1,680
1959/60	48,486	1,712
1960/61	53,107	1,666
1961/62	58,086	1,798
1962/63	64,705	1,805
1963/64	74,814	1,805
1964/65	82,045	1,859
1965/66	82,709	1,755
1966/67	100,262	1,797
1967/68	110,315	1,827
1968/69	121,362	1,846
1969/70	134,959	1,734
1970/71	144,708	1,748
1971/72	140,126	1,650
1972/73	146,097	1,508
1973/74	151,066	1,359
1974/75	154,580	1,808
1975/76	179,344	2,261
1976/77	203,068	2,524
1977/78	235,509	2,738
1978/79	263,938	2,752

Primary Sources of Funds of Foreign Students

As illustrated in **Figure 4C** almost two-thirds of the students for whom this information was reported in 1979/80 paid for their education with personal and family funds. The second largest source of funding came from foreign students' home governments followed by the students' colleges or universities which provided 9.2% of all funds. Together, these three sources of funds accounted for 87.6% of all foreign student financial support.

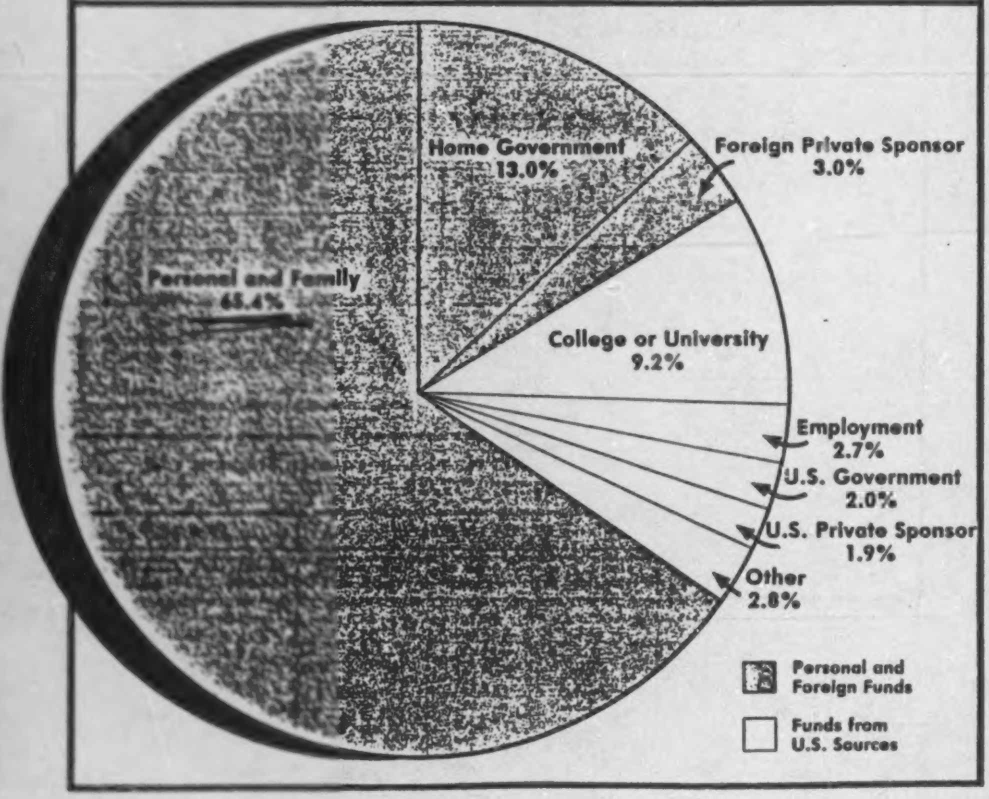
The remaining 12.4% of student funding reported included foreign private sponsors (3.0%), employment (2.7%), the U.S. government (2.0%), and U.S. private sponsors (1.9%).

Figure 4C also identifies and separates two categories of funding sources: (1) funds that are clearly identified as being from the United States and (2) funds that are clearly from foreign sources or are identified as coming from the student or his family. This categorization suggests that 15.8% of foreign student support comes from U.S. sources while as much as 81.4% may originate from outside the United States.

Table 4.4 lists the number and percentage of students that received each of the major sources of funds for the past three academic years. The percentages are illustrated in **Figure 4D**. These figures suggest that foreign students have been relying more heavily on personal and family funds while support from U.S. sources has declined substantially. While 18.2% of foreign student funding came from U.S. sources in 1977/78, only 15.8% came from the same sources in 1979/80. The largest reductions occurred in U.S. government support and in employment.

FIGURE 4C

Percentage Distribution of Foreign Students by Primary Source of Funds, 1979/80



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EXECUTIVE VICE PRESIDENT
John F. Reichard

March 14, 1983

Betsy Greenwood
Counsel
Senate Subcommittee on Immigration
and Refugee Policy
A-509 Annex - Old Immigration Bldg.
119 D Street, NE
Washington, DC 20510

Dear Betsy Greenwood:

Please find enclosed a copy of the written testimony submitted by Marvin J. Baron, Director, Foreign Student and Scholar Services, University of California-Berkeley and President-elect, National Association for Foreign Student Affairs, to the House Subcommittee on Immigration, Refugees & International Law on the ocassion of public hearings, March 10, regarding the "Student" provisions proposed in H.R.1510.

Information and discussion contained in the enclosed written statement complements the earlier testimony of Eugene Smith, Director, Foreign Student and Scholar Program, University of Colorado-Boulder, in consultation with officers of NAFSA, submitted to the Senate Subcommittee on Immigration and Refugee Policy on the ocassion of public hearings, February 24, concerning "Student" provisions proposed in S.529.

I am hopeful that the enclosed testimony can be shared with the Subcommittee Staff Members and appear in the Hearing Record.

Respectfully,

John Robichaud

John Robichaud
Coordinator
Government Relations
NAFSA

N.B. If NAFSA can provide any additional information regarding this significant matter of foreign students and scholars and the effects of immigration policy on the declared national goals of international educational and cultural exchange, please contactme at telephone 462-4811.

35th NAFSA Annual Conference, Cincinnati, Ohio, May 24-27, 1983

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Statement of

Marvin J. Baron

Director, Foreign Student and Scholar Services
University of California-Berkeley

President-elect,
National Association for Foreign Student Affairs

Mr. Chairman and members of the Subcommittee, I am Marvin Baron, Director of Foreign Student and Scholar Services at the University of California, Berkeley, and President-elect of the National Association for Foreign Student Affairs, the primary organization of professionals working in international education on American campuses. NAFSA appreciates being afforded the opportunity to express its views on a provision of H.R. 1510 which has received little national attention, the enactment of which would have a negative impact on the Immigration and Naturalization Service, American higher education, and the health of important sectors of American industry. The provision in question would impose a two year home country residence requirement on all F and M students in this country, forcing them to return home for two years after completion of their studies before they would be permitted to seek permanent residence, or any other visa status, for employment in the United States.

It is our belief that there is no compelling reason to create legislation that blankets all foreign students in those categories, with no regard to the need for their professional talents in their countries and with an unwieldy system of waivers for those whose skills are needed in the United States. The indiscriminate inclusion of all foreign students in the proposed legislation undoubtedly derives from several significant misconceptions that have made their way into the minds of different groups of Americans.

The first misconception is that many, if not most, foreign students in this country are funded by government agencies in their countries or ours to meet specific developmental needs back home. Data in Open Doors have consistently shown that fewer than 20% of the foreign students are funded by any government agency and that 65-70% receive their primary support from personal or family funds. The majority of foreign students thus come with their own funding and their own academic and professional goals.

The second misconception is that the overriding purpose for which American universities admit foreign students relates to manpower and development needs of other countries. This is one of the most significant missions we have in international education, but the truth is that American institutions have many diverse reasons for admitting foreign students: to bring educational and cultural enrichment to our campuses; to help our students gain a deeper understanding of the rest of the world; to assist our graduate departments to continue critical research programs in times of temporary shortages of American doctoral students; to enhance scholarly and scientific collaboration; and, for some schools, to help maintain an adequate pool of qualified applicants during a period of decline in the number of Americans of college age. At the same time, a number of parallel national priorities are served by the presence of foreign students. Any system of disincentives that would diminish the number of foreign students in this country would thus harm both national and institutional interests.

The next misconception lies in the belief that most foreign students never leave the United States after finishing their studies. Claims that 40,50, or even 60% remain in the United States have been offered in recent years in the national media. Using data from the Immigration and Naturalization Service and Open Doors, it would appear that the actual number of foreign students adjusting to immigrant status after completion of their studies is about 15,000 per year, or about 15% o. those who have finished academic programs here. These are hardly staggering figures when seen in the context of the total number of foreign students currently in the United States (over 300,000) or the total number of Americans in the job market (over 100 million). It is not surprising that higher figures have emerged in the national consciousness since many news stories have referred to the numbers of illegal aliens in the United States (many millions) in the same breath in which they alluded to foreign students who stay in this country. The immigration issues relating to these two groups must clearly be seen in separate and distinct frameworks.

Beyond numbers, however, it is important to address several "brain drain" issues. Government agencies and many of our institutions have expended enormous sums of money and time in the last 25 years in educating foreign students to meet essential manpower needs in developing countries throughout the world. The extent of the success achieved in this area has rarely been given much attention, but these efforts have made major contributions to the development process in country after country. The commitment to these goals remains alive and strong at the national and institutional levels and in the ongoing work of countless members of our Association. There is no demonstrable need, however, to augment these efforts by attempting to send large numbers of foreign students back to countries in which their professional skills may not be needed or even usable. It is a serious mistake, thus, to believe that the ability of 15,000 foreign students to obtain immigrant status in the United States each year is sabotaging the development of the Third World. The overwhelming majority of those who stay have come on their own and have not been sent here for the fulfillment of any manpower goal.

Furthermore, experience clearly shows that countries, no matter what their level of development, have been able to attract American-educated nationals back home whenever jobs have been available that are rewarding, and on a professional level commensurate with the education these students have acquired. Through the imposition of a two year home country residence requirement, we may be able to make students leave this country, but we certainly have no way of forcing them to return to their home countries. Indeed, we know that many American-educated professionals work in third countries when their own countries offer few opportunities in their disciplines. The nature of job openings in the home country can thus be seen as the hinge on which most "brain drain" questions turn.

Viewing the basic issues in this perspective, NAFSA reaffirms that it sees no strong or clear reason to impose the two year home country residence requirement on all F and M students. If it is the will of Congress to create such a requirement, we believe that it should be limited to those foreign students whose education has been funded by a government agency, in our country or theirs, or who have acquired professional skills that are badly needed at home. This would make the requirement for F and M students exactly parallel to the existing requirement for J Exchange Visitors. On the whole, the requirement for the latter group has worked very well since its modification in 1970. There is great virtue in applying a system that has been tested by time rather than creating an entirely new system fraught with difficulties and inequities. Having an identical requirement for all student visa categories (F,M, and J) would have the further significant advantage of offering no incentive for students to move from one category to another. If the requirement were enacted as currently written in the bill, there would be a major flow of students to the J category since its residence requirement is not applied in a blanket fashion. It is our strong conviction that the guiding principle of any residence requirement for foreign students should be selectivity, not all-inclusiveness, i.e. it should apply only to those foreign students for whom there is a specific and important reason to make acquisition of permanent residence in the United States difficult or impossible.

At this time there are provisions in both the Senate and House bills that would limit the granting of waivers of the home country residence requirement to foreign students in certain scientific and technical fields. While the shortages in those areas may be more acute, we do not believe the national interests would be well served by rendering it impossible for social scientists, philosophers, musicians, and artists who have studied in this country to stay on, especially if their talents have earned them offers of faculty positions at our universities. Gifted aliens in many different disciplines have made major contributions to the educational and cultural wealth of this country and we do not believe that any discipline should be excluded from eligibility for a waiver. Since needs in both the academic and industrial sectors of our society seldom remain constant or predictable, we also believe that it would be short-sighted to establish any numerical limitation on the number of waivers that can be granted under whatever residence requirement system may finally be established.

It is time to turn to the final, and perhaps most important, misconception, the strongly held belief that if the residence requirement is not imposed on all F and M students, serious displacement of American workers will occur. Those who hold this belief do not fully recognize that a mechanism has already been created by law and regulation that has proven to be effective for the last decade, that of the labor certification process. Through this screening mechanism, no aliens are permitted to acquire immigrant status based on their skills unless it can be clearly demonstrated by an American employer that no qualified and interested American workers could be found for the position, using all reasonable available means in the recruitment process. There are, of course, complaints that too many aliens have been granted labor certifications, but the fact is inescapable that since creation of this mechanism there has been no significant penetration by aliens into a field in which there has been an adequate supply (or oversupply) of American workers. What more can one ask by way of protection for our workers? The Department of Labor has done a remarkable job of carrying out both the letter and the spirit of law and regulation in this difficult process, and if it is guilty of any imperfections, this can be attributed to the insistent demands made by American employers with urgent needs for skilled workers, or to the understaffing of its regional offices. Neither of these problems will be addressed at all by the creation of a new mechanism to block the entry to aliens into the job market. Indeed, there is an enormous advantage to the existing labor certification mechanism: it can be immediately responsive to the supply and demand forces in our labor market. When, for example, American universities were faced with a serious shortage of people to teach Accounting to the larger number of American students interested in business courses, the Department of Labor was able to discern quickly from the information provided by univeristy search committees that a genuine shortage existed in this area. Qualified individuals were thus available within a relatively short period of time to teach essential courses. If the proposed bill has been in effect at that time, our universities would have been forced to wait for one or two years for the creation of new legislation that would have been needed to add Business Administration or Accounting to the current list of four scientific and technical fields for waiver purposes. Students at our universities would have been forced to pay a heavy price for such a delay.

We recognize that the waiver system is not intended in any way to replace the current labor certification mechanism, but it is clear that acquisition of the waiver is intended to represent a significant new hurdle for any foreign student seeking immigrant status. Why create a second obstacle course when the existing one has already proven to be effective? If that existing system is found wanting in any respect, why not make adjustments in that system? Some would answer these questions by maintaining that if the process of employing aliens is made difficult enough, American universities and businesses will finally be forced to try harder to find and train Americans in the shortage fields. The truth is that American institutions and industries are already making all out efforts to recruit, to induce, and to train Americans in shortage fields, and in time the significant marketplace incentives should draw more Americans into those fields. If hundreds of thousands of aliens were entering our labor market, those inducements might not be present, but consider that in the last annual count made (1981) there were only 25,000 labor certifications issued, scattered over a wide range of fields; only 1600 were granted to aliens going into university teaching. These are hardly figures that could have a major impact on any one segment of the American labor market.

Let us move next to what may be the most significant practical reason for not creating a new screening mechanism to deter alien workers, namely the vast bureaucracy that will absolutely be required to execute the new system of waivers. Consider the fact that the Immigration and Naturalization Service is already so seriously overburdened and understaffed that it cannot keep up with its current workload in a timely fashion. Consider further that if this legislation passes, the workload of that Service will be doubled for years to come in overseeing an employer sanction program, an amnesty program, etc. There is no way that the Service will possibly be able to handle the demands of the proposed waiver system unless Congress appropriates substantial amounts of new money to the Service. Given the likely constraints on the federal budget for the foreseeable future, this is not very likely.

The result would mean intolerable delays. American universities and businesses already find it agonizing to be forced to wait 6 months, 12 months, perhaps longer before they can complete the process of helping an alien to obtain immigrant status. The new process will add significantly to these delays, without a doubt. In the current waiver system employed by the United States Information Agency in connection with J visa-holers, delays of 6 months are not uncommon, and that agency is dealing with a much smaller number of waiver requests than would be the case with F and M students. No one's interests are well served when a complex new system is introduced, with all the attendant bureaucratic problems and delays, if an existing system can serve essentially the same purposes. I think there is general agreement on that principle in Washington, across party lines.

There is one last area that deserves our attention: the notion that this society and most particularly our higher education system, should become less dependent on foreign talent. There are several serious flaws in this line of reasoning. There has never been a world-class, distinguished university anywhere on this globe that has been "independent", i.e. which has drawn all of its scholarly talent from within the borders of a single country. Academic disciplines simply do not recognize national boundaries. If the Department of Statistics or the Department of Chemistry at one of our institutions wants to achieve optimal excellence, it must be free to seek the best possible faculty and researchers from anywhere in the world. The ability to draw on a world-wide pool of talent has always been essential to our best universities and will continue to prove important as long into the future as those universities seek excellence. In this light, it is clear that the inclusion of a sunset provision whereby waivers would not be available after 1989 for those going into university teaching makes no real sense at all.

There has probably never been a time in the history of this country when it has been more crucial for our academic institutions to retain their leadership in science, technology and other academic fields. If they do not, you can rest assured that not only will the universities suffer, but also our children attending those universities, and the entire range of American industries which depend on these universities for a steady supply of finely honed talent. Our entire economic system is engaged in a world-wide struggle of monumental significance. NAFSA does not believe that it is in the best interest of this country to significantly reduce the flexibility of our universities in seeking the best available talent. All aliens offered long-term teaching and research positions at American universities should be given access to the highest preference category available to foreign professionals without any undue impediments. Our institutions have used foreign scholars for decades in their striving for excellence and the entire country has benefited. This is not the time to move in the opposite direction. We would all lose.

CONCLUSIONS

1. There is no compelling reason to apply the home country residence requirement to all F and M students. If a return requirement is to be imposed on these students, it should apply only to those students who have had government support for their education or who have acquired skills badly needed in their home countries. Making the requirement for F's and M's identical with the existing system for J's would have significant advantages.

2. There is no indication that the current level of "brain drain" is creating serious problems for developing countries. Many difficulties in those countries stem from the lack of professional job opportunities. Most foreign students in the F and M categories come with their own funding and for their own academic objectives. Many who come with government funding or for specific manpower training are already required to return home under the conditions of the J visa.

3. Many diverse national and institutional interests are served by the foreign student presence on our campuses. Disincentives for study in this country that would diminish the number of foreign students here would be injurious in a number of important respects.

4. A system is already in place that does an effective job of protecting American workers. The labor certification mechanism has been proven over a ten year span of time. No additional barriers are needed.

5. Creation of a new system of obstacles for foreign students who wish to remain in this country would lead to the creation of a vast bureaucracy that would add workload levels for INS that would be extremely difficult for them to handle. Universities and other prospective employers would be faced with intolerable delays.

6. American universities have a historical and ongoing need to access a world-wide pool of talent in their search for academic excellence. It is essential that there be no numerical limitation on the waivers that can be granted, that there be no limit on the disciplines that qualify for waivers and no sunset clause that would phase out waivers for universities and industry after 7 years. Access to the best available talent by both higher education and industry is a significant factor in the American struggle to maintain leadership in areas that are essential to the long term health of our society.

BIOGRAPHY
of
Marvin J. Baron

Director, Foreign Student and Scholar Services, University of California, Berkeley

President-elect, National Association for Foreign Student Affairs

Education

A.B., Rice University

M.A., Stanford University

Publications

"The Foreign Student and Immigration Matters," author

"Advising, Counseling, Helping the Foreign Student," editor and co-author

"NAFSA Adviser's Manual of Federal Regulations Affecting Foreign Students and Scholars," co-author

"Faculty Member's Guide to U.S. Immigration Law," co-author

"Relevance of U.S. Graduate Education to Students from Developing Countries," editor and co-author

NAFSA Positions (present and former)

Generalist Consultant, NAFSA Field Service
Member, NAFSA Board of Directors
Member, Government Regulations Advisory Committee
Member, NAFSA-AID Committee
Member, NAFSA Task Force on Priorities
National Conference Chairman
Regional Chairman, NAFSA Region I

Related International Education Activities

Member, CSS Committee on Foreign Student Finances
Member, Board of Trustees, African Scholarship Program of American Universities

Foreign Travel

Graduate Fulbright year in Germany, 1955-56 as student in Germanics
Visit to East Africa as member of ASPAU interview team for one month, 1967
Visit to Taiwan and Hong Kong to meet with educational leaders for three weeks, 1969
Participation in Conference on U.S.-German exchanges, for two weeks, 1972
Part of faculty for U.S. Department of State sponsored Workshop on U.S. Higher Education, in Brazil, Peru and Ecuador for two weeks, 1977
Visit to Taiwan to meet with educational leaders for two weeks, 1983

NATIONAL CATTLEMEN'S ASSOCIATION

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STATEMENT

of the

NATIONAL CATTLEMEN'S ASSOCIATION

to the

Subcommittee on Immigration and Refugee Policy

of the

Judiciary Committee

Regarding

S. 529 --Immigration Reform

and Control Act of 1983

Prepared by:

TED HORNIBROOK, Chairman
NCA Labor Committee
Goldendale, Washington

The National Cattlemen's Association is the national spokesman for all segments of the nation's beef cattle industry--including cattle breeders, producers, and feeders. The NCA represents approximately 245,000 professional cattlemen throughout the country. Membership includes individual members as well as 50 affiliated state cattle associations and 19 affiliated national breed organizations.

SUMMARY

The NCA acknowledges that there are serious problems with current immigration laws and that they do need to be re-appraised and amended to bring under control the increasing flow of illegal aliens into this country.

Corrective legislation must recognize the needs that are unique in agriculture. It must be fair and equitable to the employer who depends on alien labor as a vital part of his operation.

S. 529-----the Immigration Reform and Control Act of 1983, has, as is currently introduced, certain provisions which we believe will have a serious impact on agriculture.

While S..529 includes many areas of interest to the cattle industry, of primary concern to us are the following:

Legalization--The NCA believes a blanket amnesty will send the wrong signal to the impoverished in other countries. It gives an unfair favoritism to those who have willfully broken our laws over those who wait patiently for legal immigration. It contradicts efforts to establish control of our borders. It will also impose an undue financial burden on our federal government.

Employer Sanctions--The NCA opposes employer sanctions without a clearly identified, simple, workable and accountable national identity program.

Provisions in S.. 529 essentially place the whole burden of responsibility on the employer putting him in the role of enforcer, which should not be the case.

H-2 Worker Programs--H-2 worker programs or others of this kind must recognize the needs of agriculture. They must include criteria that is equitable and fair for both the employer and the employee. Burdensome red tape and regulations should be minimized.

Such programs should be designed to work and help the agricultural operator, not discourage him.

My name is Ted Hornibrook. I am a cattle rancher from Goldendale, Washington. I currently serve as Chairman of the National Cattlemen's Association Labor Committee. I appreciate the opportunity to testify before this committee today representing the views of 245,000 cattle producers and cattle feeders throughout the United States. The NCA position on the Immigration Reform Act has been established through two years developing the resulting position statement.

The NCA is vitally interested in S. 529-- the Immigration Reform and Control Act of 1983. We believe that if this bill is enacted as introduced, it will have a serious impact on our industry.

We acknowledge there are serious problems with the current immigration laws and that they do need to be re-appraised and amended to bring under control the increasing flow of illegal aliens into this country. However, S. 529 has provisions that, in our opinion, have not been subject to realistic analysis and are burdensome, costly, and biased against agricultural employers.

We recognize that a majority of the alien agricultural labor is associated with farming and the harvesting of produce. The cattle industry also relies on this same labor force for certain occasions.

I would like to address specific provisions in S. 529 which are of concern to the cattle industry.

LEGALIZATION

We interpret amnesty for illegal aliens as an "easy out" with innumerable deficiencies. Administration officials warned Congress in July 1982 that an attempt to grant blanket amnesty to millions of illegal aliens could mean more than $10 billion in new state and federal welfare costs over the first four years after becoming legal. A blanket amnesty for lawbreakers or the promise of it sends the wrong signal to the impoverished in other countries. This is a contradiction of efforts to establish controls of our borders.

Amnesty gives an unfair favoritism to those who have willfully broken our laws over those who wait patiently for legal immigration. The very process should be carefully detailed to you, before this bill is enacted.

The NCA, while opposing a blanket naturalization program, would be agreeable to a well-documented program which permits the needed number of working aliens who would be gainfully employed to become citizens; provided they meet the same requirements presently set forth for other immigrants seeking citizenship in the United States.

EMPLOYER SANCTIONS

The NCA is opposed to employer sanctions without a clearly identified, simple, workable, and accountable national identity program that will not unfairly discriminate against those persons of foreign extraction that are legally in the United States.

Without a workable national identity program, employer sanctions would be costly and unenforceable. They have been tried without success in other countries as well as in several states.

Provisions in S. 529 essentially place the whole burden of responsibility on the employer putting him in the role of law enforcer which should not be the case.

In no way does the cattle industry endorse the concept that employer sanctions should include criminal penalties making a convicted felon with prison sentencing capability on an otherwise law abiding, tax paying employer.

The cattle feedlots and processing plants are dependent on a permanent work force for their daily operation; not one that might be seriously depleted by an over-zealous government "hit squad" who would spend an undetermined length of time in interviews, records inspections, and searches for illegals.

H-2 WORKER PROGRAM

S. 529 does make certain changes in the H-2 worker program regarding agriculture. Unfortunately, we do not believe they address the real needs of agriculture. Agricultural needs for a temporary worker program are unique in that they must consider seasonal requirements, climatic conditions as well as existing livestock and crop conditions.

There are some basic criteria, in our opinion, which must be in any program of this kind to be workable and beneficial for agriculture, the employer and employee alike. They are:

> **Authority for administering a H-2 worker program for agriculture should be assigned to the U.S. Department of Agriculture.
>
> **The H-2 program must be made flexible because it provides a legal framework for employing labor already present in the American labor market.

**The local labor market, for labor certification purposes, should mean the area from which workers can and would be willing to commute on a daily basis.

**The H-2 program should have minimum recruitment standards.

**Employers should not be required to retain any either domestic or H-2 workers of unacceptably low productivity beyond a reasonable time.

**Employer liability and responsibility to worker benefits for housing and food should be included as in establishing the documented prevailing wage rate.

The NCA is willing and anxious to work with members of this committee and staff to produce legislation that will help to correct the existing illegal alien problems. We must, however, keep in mind that agriculture needs an adequate labor force at the right time to continue to assure consumers food and fiber needs at reasonable prices.

Thank you.

NATIONAL CHINESE WELFARE COUNCIL

COMMENTS AND SUGGESTIONS TO THE BILLS INTRODUCED BY REPRESENTATIVE MAZZOLI (H.R. 1510 on February 17, 1983) AND SENATOR SIMPSON (S. 529, February 14, 1983), WHICH, IF ENACTED, WILL BE KNOWN AS THE 'IMMIGRATION REFORM AND CONTROL ACT OF 1983'

The National Chinese Welfare Council is a nation-wide organization, incorporated in Washington, D.C., in 1957. It is not a 'welfare organization' generically speaking. It's purpose is solely for the promotion of the well being of Chinese Americans and Chinese nationals in the United States. The membership consist of the Chinese Consolidated Benevolent Associations or similar organizations in all the cities in this Country. The Chinese Consolidated Benevolent Association in each and every principal city in this Country is the umbrella organization of the Chinese organizations in the local American community, such as Hoy Sun Ning Yung Benevolent Association, Yeong Wo Benevolent Association, Sue Hing Benevolent Association, and so forth.

The National Chinese Welfare Council is in favor of the legislation to permit adjustment of status of certain entrants before January 1, 1980, and the creation of special quotas for the immigration investors. However, the Council opposes the elimination of quotas of certain children of permanent resident aliens, and brothers and sisters of American citizens. It is also against the retention of colonial quota of 600 per year for Hong Kong native citizens.

I. The Council is in favor of Title III - Legalization, Section 301(a) ..."Adjustment of Status of Certain Entrants Before January 1, 1980, to That of Person Admitted for Temporary or Permanent Residence":

(a) Section 245A (a), an alien who establishes that he entered the United States prior to January 1, 1977, and has resided continuously in the United States in an unlawful status since January 1, 1977, can adjust his status to a lawful permanent resident status.

It must be noted at this point, that in his Bill, H.R. 6514 introduced in the 97th Congress on May 27, 1982, Mr. Mazzoli proposed the date 'prior to January 1, 1978' instead of January 1, 1977, in the present Bill, H.R. 1510. The Council recommends the retention of the date, January 1, 1978.

(b) Section 245A (b), an alien who establishes that he entered the United States prior to January 1, 1980, and has resided continuously in the United States in an unlawful status since January 1, 1980 can adjust his status to that of an alien lawfully admitted for temporary residence.

Furthermore, the Attorney General, in his discretion and under such regulations as he may prescribe, may adjust the status of any alien, who had acquired lawful temporary resident status, to that of an alien lawfully admitted for permanent residence, if the alien applies for such adjustment during the six-month period beginning with the thirty-seventh month that begins after the date the alien was granted such temporary resident status.

Again, it must be noted in his Bill of 1982, Mr. Mazzoli proposed 'beginning with the twenty-fifth month', instead of the 'thirty-seventh month' as set forth in his present Bill. The Council recommends the retention of the date "twenty-fifth" month.

This Title - Legalization will grant amnesty and lawful status to many illegal aliens in the United States, and help resolve a serious problem that has not been solved for many years.

II. For the past four or five years, the Council has been proposing the creation of special quotas for the immigration of foreign investors to be admitted into the United States for permanent residence, regardless of place of birth, of color, race or creed, as an investor will establish and increase our foreign trade, stimulate our economy, create jobs, and so forth. Now Senate Bill, S. 529, under Title II, Reform of Legal Immigration, Part A - Immigrants, Sec. 202. Preference and nonpreference allocation systems, has established a new preference category for investors. Qualified immigrants who have invested, or established to the Attorney General their intention to invest, substantial capital (in an amount set by the Attorney General and not less than $250,000.00) in an enterprise in the United States of which the alien will be a principal manager and which will benefit the United States economy and create full-time employment for not fewer than four eligible individuals, other than the spouse or children of such immigrant shall be allocated visas.

III. We oppose to the retention of the colonial quota, which, we believe, is discriminatory. The colonial quota was originally directed at the colonies in the Caribbean so that the blacks would be restricted from immigrating. Since 1952, most of the colonies have become independent nations. However, the colonial quota of600 per year for Hong Kong continues to be in effect, and has been over-subscribed, thus causing a backlog of up to 17 years. The Council recomends an increase of the Hong Kong quota to 3,000, and the natives of Hong Kong be allowed to use the unfilled quota of the United Kingdom.

IV. The Council is in favor of Updating registry date to January 1, 1973. See H.R. 1510, page 85, Line 19: "Sec. 302.(a) Section 249 (8 U.S.C. 1259) is amended -(1) by striking out "June 30, 1948" in the heading and inserting in lieu thereof "January 1, 1973", and (2) by striking out "June 30, 1948" in paragraph (a) and inserting in lieu thereof "January 1, 1973". (b) The item in the table of contents relating to section 249 is amended by striking out "June 30, 1948", and inserting in lieu thereof - "January 1, 1973".

V. The Council opposes the amendment of Section 203 of the Immigration and Nationality Act, relating to spouses and children of permanent resident aliens, and brothers and sisters of American citizens.

Senate Bill, S.529, proposes that all children of permanent resident aliens, over the age of 21 years, who do not have an established priority date under Section 203(a)(2) of the Immi-ration and Nationality Act, and all brothers and sisters of citizens of the United States, that do not have a priority date established under Section 203(a)(5) of the Act, prior to May 27, 1982, shall no longer be eligible and can no longer enjoy the preference allocation for family reunion under the immigration laws of the United States.

If we were to look into the history of the immigration in the United States, our adult children and our brothers and sisters were always considered our close blood kin. The concept of universal love of men, blood kinship has a special spot in our hearts. Our Immigration laws have always recognized this finest concept of man. All mankind has the natural desire for reunification of the rest of the members of their family. Now why this sudden change? Does time dilute our relationship between us and our adult children? Does time dilute our relationship between ourselves and our brothers and sisters? Have our values changed?

To disturb Sections 203(a)(2) and 203(a)(5) of the Immigration and Nationality Act is a grave error. To do so, would inadvertently convey to the rest of the world that America has changed its value of family concept.

It must be further noted that in the proposed legislation, Preference Allocation for Family Reunification Immigrants, in the 2nd and 4th (formerly 5th preference) preference categories has set forth the cut off date, as of May 27, 1982, had received approval of a petition made on their behalf for preference status by reason of the relationship described in subsection (a)(2) and (a)(5) as in effect on such date. To use this date is not only unjust, but it violates the basic concept of our laws. A careful examination of the visa petition sections of the main offices of the Immigration and Naturalization Services at San Francisco, Los Angeles, New York, and so forth, will show a large back log of present 5th preference visa petition cases. These offices due to lack of personnel or based on policies, first work on cases that have immediate visa numbers available, such as non-quota cases - spouses and minor children of citizens of the United States, and parents of American citizens. The present 5th preference cases of persons born in China or the Philippines, as their priority dates, are based on the filing dates, and not the dates of approval, and it normally takes about four or five years time before each of the prospective immigrant's turn will be reached under the quota, and so these cases are usually set aside. Therefore, it is quite normal, during the past few years, that when a person inquires about his pending 5th preference visa petition for his brother or sister, the answer is, " What is your hurry? You do not have to worry. The priority date is based on the date that your visa petition was filed with this office, and not the date of approval of the petition. If we approved the petition, it is forwarded to the American Consulate abroad, and it just remains in that office until the priority date is reached."

H.R. 5872 and S.2222, introduced by Representative Mazzoli, and Senator Simpson on March 17, 1982; and were re-introduced to the House of Representatives and Senate as H.R. 1510 and S. 529,respectively, this year. After the Bills, H.R. 5872 and S. 2222 were introduced, hundreds and hundreds of people have been flooding to the Offices of the Immigration and Naturalization Service to file visa petitions for their brothers and sisters. Are we to say that because the 1982 bills had a cut off date of March 1, 1982; and the present S. 529 has a cut off date of May 27, 1982, that the Immigration and Naturalization Service after receiving the visa petitions, should merely set them aside, doing nothing further, and just wait, then upon passage of the bill to throw the petitions in the waste paper baskets. Of course not. The Service must work and adjudicate these petitions, and if possible, clear them out as fast as they are received.

The Council recommends that the beneficiary of a visa petition submitted and filed with the offices of the Immigration and Naturalization Service, pursuant to the provisions of Sections 203(a)(2) and 203(a)(5) of the Immigration and Nationality Act, prior to the date of the enactment of the Immigration Reform and Control Act of 1983, upon approval of the visa petition made on his or her behalf, shall enjoy all the benefits under the provisions of said Immigration and Nationality Act.

VI. We are also under duty to oppose the particular section of the Bills which impose civil and criminal sanctions on employers of aliens unauthorized to work, for the following reasons:

1. It brings home to us a memory of those early days when caucasian Americans in California violently rejected Chinese as workers. This page in the History of California is one that no American can be proud of today.

2. It creates new operational difficulties for Chinese American merchants. A desire to help out the financially distressing young scholars in pursuit of higher education in this country is natural and admirable. Chinese scholars have made substantial contributions toward progress in the field of science and technology.

3. It affects the chances of Americans of Oriental origin seeking legitimate employment. The general public are not experts in the field of immigration laws, and cannot distinguish one paper from the other. To obtain the necessary information from the Immigration and Naturalization Service would take months. In the meantime, the position will be filled by another applicant.

Dated: March 22, 1983.

**NATIONAL COUNCIL OF ASIAN INDIAN ORGANIZATIONS
IN NORTH AMERICA**
3705 E. Buchtel Blvd., #105
Denver, CO 80210

February 22, 1983

Sub-Committee on Immigration
Committee on the Juditiary
U.S.Senate
Washington D.C.-20510

Subject: Hearing on the new Immigration Bill

On behalf of the National Federation of Asian Indian Organizations in America, I would like to bring to your kind attention the following points concerning the Immigration Bill for which you are holding the hearing.

We, in the Asian Indian community recognize that the current U.S. Immigration laws and policies have problems and support the necessity of urgent reforms. The new policy however, needs to reflect the social, cultural, economic, political and racial differences that exist among the people of different countries. Such a policy should not go against human values to which U.S. is committed. The issue of political and/or economic refugees as well as the problems of illegal aliens be treated separate from legal immigrants. Allowing refugees to settle in the U.S. or providing asylum to illegal aliens are humanitarian acts which should not adversely affect the rights of legal immigrants. The following amendments are suggested to the proposed bills in the light of above considerations.

(1)Retain the eligibility requirements for admission to the U.S., of brothers and sisters of U.S. citizens and children of permanent residents as it is, that is to retain Second and Fifth preference as they are.

(2) Retain the priority for professionals and persons of exceptional ability as it is.

(3) The provisions of "employer's sanctions" is not acceptable, however, if they must be imposed, then work permits be issued by the Immigration and Naturalization Services. These permits be used only for the purpose of employment.

(4) Foreign students need not be required to reside abroad for a period of two years. Retain the provision as it is now.

(5) Provision authorizing the local police to enforce the immigration laws is dangerous. It may tend to further harrassment of protected groups and might lead to reaction by these groups and possible violence.

(6) Reactivate the Advisory Committee for INS which should provide for communication between the INS and the local communities.

We hope you will take consideration of these points. Thank you.

Sincerely,
Thomas Abraham

Thomas Abraham
President

TESTIMONY FOR HEARINGS OF SENATE SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY - WASH., D.C., FEB.24 - 28, 1983

STATEMENT BY WILLIAM F. CAGNEY OF NATIONAL FOREIGN TRADE COUNCIL, INC.

I am William F. Cagney, Director of Industrial Relations and Management Resources of the National Foreign Trade Council, Inc., a non-profit association of over 600 companies engaged in international trade and investment. I am pleased to present the views of the Council on the Immigration Reform and Control Act of 1983 (S.529).

Our member companies, which are responsible for more than half of the U.S. exports of manufactured goods and services, are vitally concerned about the need for overall improvement in United States immigration policy and procedures to take into account the reasonable requirements of business.

We are essentially concerned with simplifying and expediting the entry into the United States of executive, managerial, and technical personnel with specialized knowledge who are needed at the United States headquarters or plants of international companies. These individuals use their skills and international expertise to further enhance the growth of U.S. companies in international markets and the expansion of export operations which are vital to the needs of the United States economy.

We have the following recommendations on the business related provisions of the Immigration Reform and Control Act of 1983:

EMPLOYER SANCTIONS

The NFTC does not oppose the imposition of civil and even criminal sanctions for the engagement of illegal aliens. We recognize the underlying circumstances prompting these control measures. However, the procedures for verification and record-keeping should not be cumbersome nor conflict with EEO guidelines.

INDEPENDENT IMMIGRANT PREFERENCES

We favor the proposed preference categories for business-related entrants to the U.S. and urge that the anticipated visa number allocation be maintained at the 75,000 annual level. (In fact, we preferred the 100,000 figure specified in the original 1982 bill.) This level is not at all unreasonable as it does include immediate family members of the Independent Immigrant - thus, minimizing any labor force impact.

We are opposed to the provision in the modified House bill, reintroduced recently by Representative Mazzoli as H.R. 1510, which omits reference entirely to the "Independent Immigrant" categories and simply reverts to the old Preference System, which has two major drawbacks for business-related transfers:

- An inadequate limit of 27,000 in each of the 3rd and 6th Preference categories.
- Poorly defined 6th Preference category which is intended to cover both "skilled and unskilled workers" - which often results in a senior level business executive being accorded the same priority as a domestic servant.

Entry of Professional, Managerial, and Executive Staff

We favor the entry of selected professional, managerial, and executive staff required by U.S. companies to facilitate and expand their international operations - perhaps as a new "2nd Preference" in the Independent Immigrant Categories.

FOREIGN STUDENTS - TWO YEAR FOREIGN RESIDENCY REQUIREMENT

We favor the provision allowing foreign students with advanced degrees in high technology fields to remain in the United States to work or to teach, rather than be forced to return to their home country (or elsewhere) for a minimum period of two years.

We favor the House bill which does not attempt to set a specific numerical limit on the number of waivers granted of the two year foreign residency requirement.

LABOR CERTIFICATION

Although the elimination of the Labor Certification requirement for certain positions based on nationwide job market data is welcomed, we still believe it essential for companies to have the opportunity to require the Department of Labor to conduct an individual case review, where deemed appropriate.

VISA WAIVERS FOR CERTAIN VISITORS (TOURISTS)

We welcome the introduction of a "pilot program" initially set at 5 countries. However, we continue to recommend approval of the earlier Rodino bill, H.R. 4514, which would waive the Visa requirement for tourists coming to the U.S. for periods up to 90 days for foreign countries that have a defined low abuse rate of violations and also reciprocate on waiving visas for U.S. tourists going abroad. This would greatly reduce the unfortunate "trade barrier" restriction which the U.S. has imposed by requiring visas for all tourists.

ADJUSTMENT OF STATUS

Denial of opportunity to adjust status for an alien found to be "illegal" should not apply with retroactive effect nor in cases where the INS or other U.S. Government agency caused technical violations through delay in processing.

L-1 VISA PROGRAM

We recommend a Program facility for companies prefiling required documentation to arrange for intra-company transfers of managerial, executive, or specialized knowledge personnel with a minimum of one year service, along the lines of the existing J-1 Programs. The concept of the program is to facilitate the flow of key personnel.

The Immigration and Naturalization Service is prepared to handle the proposal administratively, but draft regulations setting out the specific conditions are still to be released. We understand they may be unduly restrictive, particularly as to an anticipated minimum number of 10 L-1 Visas annually for companies to qualify and the exclusion of the "specialized knowledge" personnel from the Program. Our NFTC survey in December 1982 suggests that a more practical L-1 limit would be 5 per year. The exclusion of the "specialized knowledge" personnel would detract considerably from the usefulness of the Program for our companies.

We recommend favorable consideration of the above views and proposals which we believe will be of help to the American business community enabling us to compete more effectively in international markets and thus aid our U.S. economy.

We thank you for the opportunity to submit this testimony.

WFC 2/25/83

STATEMENT OF THE NATIONAL RESTAURANT ASSOCIATION ON THE IMMIGRATION REFORM AND CONTROL ACT OF 1983

S. 529

The National Restaurant Association is a non-profit trade association with headquarters in Washington, D.C. It offers programs in public affairs, education and research to its 10,000 members, who operate more than 100,000 foodservice establishments.

We appreciate the opportunity to comment on the proposed Immigration Reform and Control Act. Twice last year we testified on the problem of undocumented foreign workers, and since our members are likely to be greatly impacted by any such legislation, our interests in the subject remain high.

The question of immigration control is, of course, a matter of public policy and we wish to comment only on this legislation insofar as it affects our industry. We do have several concerns which we hope to see addressed by amendments or clarified in report language.

Forms: Paperwork Burden

First, there is the matter of documents required by this legislation, and the resultant burden on the employer to store and maintain these documents. We suggest that this problem be significantly reduced by authorizing the inclusion of the required attestations within normal employment application forms. Perhaps several short paragraphs at the bottom, so there would be no additional storage problem. If that were possible, and if the language were amended to conform to EEOC requirements to retain documents for two years instead of the proposed five, the paperwork requirements would be a good deal less burdensome.

Form Substitution Problem

What is to assure that the documents INS sees if it should make an investigation are the same ones that the employer verified when the employee was interviewed? Since the employer's liability would appear to be determined by an investigation which could take place some time after the interview, we are concerned that a judgement could be made based on documents the employer had not even seen,

Counterfeit Documents

NRA wishes to join with those others who have pointed out that this system does not address the problem of counterfeit forms. There is nothing in this legislation that would preclude the use of sophisticated counterfeit forms for the first three years of the program. Although we realize the employer would not be responsible for detection, the fact remains that the problem will still exist and the proposed legislation does nothing to solve the problem.

Questions of Discrimination

We appreciate that this legislation goes to great lengths to eliminate charges of discrimination by providing that all applicants present the same form of identification. However, we fear an enormous increase in affirmative actions, because employers will know the applicant's country of origin (information they are not currently privy to). There will be many charges of discrimination by those who were not selected for employment or who for legitimate reasons were not considered for promotion.

Additionally there is the fear that employers will clearly be reluctant to hire aliens, and therefore make themselves vulnerable to possible actions under this legislation, when they have an option not to do so.

Violations and Penalties

No one can excuse the employer who willfully employs aliens for the purpose of undercutting his competition or taking unfair advantage of his employees, whether citizens or aliens. Penalties, particularly those of the size required by this legislation, should be structured so as to reach only those employers who willfully violate the law.

Our concern under both this bill and the Reagan Administration's 1982 proposal is that the law-abiding conscientious employer may be caught and subjected to as severe punishment as one who actively seeks to hire and exploit illegal aliens. We believe that any legal sanctions against the employer should be applied only where there is clear evidence of repeated deliberate violations. We assume, for example, that "pattern or practice" applies only to that type of violation, but civil penalties apply to any violation after the first, including inadvertent ones.

Judicial Recourse

Another portion of S. 529 and H.R. 1510 which concerns us is that section offering charged employers a hearing conducted by the Attorney General's immigration officer. Notwithstanding the fact that the Attorney General and his staff may seem like both prosecutor and judge in these proceedings, the employer's only recourse from an adverse decision seems to be a refusal to pay the civil penalty assessed, followed by suit for collection to be brought by the Attorney General in Federal district court. But even there, the court is limited to a review of the administrative record and the Attorney General's findings of fact, which only have to meet a "substantial evidence" standard to be considered conclusive.

Given the size of the proposed civil penalties and the possibilities for dispute over whether the employer did or did not review the required documentation, or whether that documentation appeared genuine on its face, the employer should be granted greater opportunity to defend against charges brought under this act.

Employers under this legislation are not confronted with insignificant penalties. They should be provided with more significant protection. They are left with less due process than that afforded common criminals.

GAO Report

We feel very strongly that the GAO Report, "Information on the Enforcement of Laws Regarding Employment of Aliens in Selected Countries," issued on August 31, 1982, needs to be more strongly acknowledged and its message heeded. Clearly, employer sanctions do not work as a deterrent to illegal immigation.

Summary

The foodservice industry remains concerned about the use of employer sanctions to curb illegal immigration. Clearly the authors of this legislation consider employer sanctions vital to its success, even though the study done by GAO at Senator Simpson's request concludes otherwise. Heedful of the many long hours and months that have gone into its drafting, we nevertheless feel constrained to point out that there are many unanswered questions. As written, this bill presents significant problems to the nation's restaurant industry, and we have attempted to outline them in this communication. These considerations demand to be addressed if this legislation is to be considered a viable solution to this nation's illegal immigration problems.

TEXAS AND SOUTHWESTERN CATTLE RAISERS ASSOCIATION

1301 W. SEVENTH ST. FORT WORTH, TEXAS 76102 817 332-7064

FRATES SEELIGSON, PRESIDENT
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JOHN E. BIRDWELL II, 2ND VICE PRESIDENT
DON C. KING, SECY-GEN MGR.

STATEMENT
of the
TEXAS AND SOUTHWESTERN CATTLE RAISERS ASSOCIATION

to the
Subcommittee on Immigration and Refugee Policy
of the
Judiciary Committee

Regarding
S. 529--Immigration Reform
and Control Act of 1983

Prepared by:
FRATES SEELIGSON, President
TSCRA
San Antonio, Texas

Texas and Southwestern Cattle Raisers Association represents more than 14,000 livestock producers in Texas, Oklahoma, and surrounding states. It has been the spokesman for these cattlemen for 106 years.

My name is Frates Seeligson. I am a cattle rancher from San Antonio, Texas. Presently I am serving as President of the Texas and Southwestern Cattle Raisers Association representing 14,000 members in Texas, Oklahoma, and surrounding states.

The Texas and Southwestern Cattle Raisers Association operates on the basis of the following premises.

The first is that Mexico's problem is our problem. She is our country's largest oil supplier, our third largest trading partner, and owes our banks $25 billion. We have to provide an outlet for her unemployed masses who are coming, like it or not. We have jobs that our people don't want and their people do. We want to have enough control to stop the flow. The only thing in worse shape than Mexico's problem is our immigration problem. The situation is completely out of hand. Nobody knows how many illegal aliens there are--where they are--or what they are doing. Most of them who want in eventually get in. With the tide of illegal immigration, not only from Mexico but all over the world, it is imperative that we seize control of our borders if we wish our country to keep any kind of semblance to the one which we know and love.

Mexico is in a sorry mess. She owes $85 billion in foreign debt. Although no one really knows, unemployment is estimated at over 50%. With a birth rate of 3.6%, the population will double every 20 years. Half of the people are under 17. With each dollar drop in oil prices, Mexico's income goes down approximately $600 million. A real worry exists about Mexico's future.

Nobody knows how long the Mexican people will endure the hardship of austerity before there is a widespread public backlash. Even before the "sweet seduction of communism," Mexico had its share of revolutions. Mexico is the prize for Russia. They could care less about El Salvador and Guatemala except as stepping stones to our largest oil supplier.

The last thing the people of Texas want is an El Salvador across the Rio Grande. In January, almost 84,000 illegal aliens were caught along the border, up 45% over the same period a year ago. With the drop in oil prices, the problems are just beginning.

The people are young, hungry, unemployed, and are coming across the river to the promised land. To stop them, we have an undermanned force of 300 men tyring to operate an enforcement program that is an exercise in complete futility. They catch a fraction of the illegal aliens, deport them with no penalty to anyone, catch them again a few days later, deport them with no penalty, catch them again, ad nauseum.

The first requirment is to find out how many illegal aliens are now here. Until we know this, there is no way to understand fully the magnitude of our problem. To determine who is whom, some amnesty must be offered to induce an illegal alien to register. We all know that amnesty is a blind jump into the future. My membership feels that U.S. citizenship is a precious birthright and that the provisions of the present bill are too generous. We run the risk of spending unknown billions in welfare costs, rewarding the law breakers and sending wrong signals to the poor in other countries. We feel that the better approach is to use the existing registry procedures under the present immigration law by updating the registry date of 1948 to 1973. The people who qualify under this revised statute will become citizens in a 10-year period similar to those legal immigrants seeking naturalization.

While the amnesty provisions are being worked out, the illegal alien flow will continue. To stop the flow, the bill proposes to build up the border patrol and impose employer sanctions.

Strengthening the border patrol sounds good. Although it has 2,300 agents, no more than 300 are on duty at a time because of rotating shifts and vacations. Double it, triple it, then get in a car and drive from Brownsville, Texas to San Diego, California in the daylight and come to your own decision. The Immigration Service will catch more aliens, but it will not stop them. A Berlin Wall will;900 agents won't stop them.

The second requirement to stem the flow is employer sanctions. In our opinion, this segment is nothing but window dressing. The success of any program is going to be determined by the support given it by our U. S, citizens. Without a good H-2 or guest worker program to provide an incentive to cooperate, the employer can and will circumvent the act by accepting forged and fraudulent social security cards, birth certificates, or driver's licenses allowing him to evade responsibility for illegal alien employment. Employer sanction laws in other states and countries have a dismal record for success because of smart lawyers, lack of enforcement resolve, lack of personnel, and too many steel-trap minds constantly devising ways to evade responsibility.

This problem must be solved. Our recommendations for solving the horrifying problem of runaway illegal immigration are:

- Adopt our recommended amnesty approach.
- Beef up the border patrol in an effort to establish more control as part of an overall package.

- The H-2 program was originally set up by Congress to allow documented alien workers to take jobs that U. S. citizens turned down. As far as Texas is concerned, administrative rulings by the Department of Labor abrogated the original mandate of Congress and this program is not used. As part of the whole package, H-2 must be reworked by statute and administratively to give agricultural employers access to a stable work force

- The U. S. government should establish permanent identification cards for each and every citizen of our country. Any employer who hires a person without this I.D. card should be subject to civil penalties. We feel that this will not only control the immigration flow, but give as much of a boost to foreign workers as our domestic market will permit.

The impact of ignoring these measures, not only to us, but to future generations, is devasting. We would rather have nothing than a measure that promises hope, deludes us into tranquility, and leaves us with the problems unresolved.

THANK YOU!

STATEMENT OF THE
UNITED STATES COMMISSION ON CIVIL RIGHTS
SUBMITTED TO THE
SENATE SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY

February 25, 1983

Thank you for inviting the United States Commission on Civil Rights to submit its views on discrimination issues raised by S. 529, the Immigration Reform and Control Act of 1983.

The United States Commission on Civil Rights in recent years has become increasingly concerned about inadequate public understanding of and inaccurate information on immigration to this country. Allegations and complaints of civil rights violations in the enforcement of immigration laws have been received by the Commission from aliens as well as citizens and long-time residents. It was for these reasons that in 1977, the Commission undertook a study of the civil rights problems in immigration law, practice, and procedure. In identifying and exploring the impact of those problems on citizens, resident aliens, and undocumented aliens, the Commission conducted extensive background research, field investigations, and public hearings. The findings and conclusions of this study are embodied in the Commission's national immigration report entitled, The Tarnished Golden Door: Civil Rights Issues in Immigration, which was submitted to the Congress and the President in September 1980.

During the course of the Commission's study, the undocumented worker issue was examined at length. It was the judgment of the Commission in 1980 and still is the judgment of the Commission, that the Federal government should take steps to reduce significantly the number of undocumented workers in the labor market, particularly in those areas where they have an adverse impact on the employment opportunities of citizens and legal residents. Exactly how this goal is to be achieved is, of course, currently a matter of debate. One proposed solution to the problem--indeed, the solution opted for under S. 529--is the adoption of an employer sanctions law coupled with a system of worker identification. This approach was considered at length by the Commission. The Commission has a deep and overriding concern about the forseeable discriminatory impact that an employer sanctions law would have on citizens and legal residents seeking employment who are racially or culturally identifiable with major immigrant groups. Coupled with the Commission's concern about the effectiveness of such a system, the imposition of law enforcement responsibilities upon private employers, and the civil liberty ramifications of a worker identification system, the Commission, by a vote of 3-2, rejected the adoption of an employer sanctions law either with or without a national identity card, work permit, or other compulsory identification system.

More specifically, the Commission believes that a program of employer sanctions will inevitably have a discriminatory impact on Asians, Hispanics, and persons who are "foreign looking." An employer sanctions program presents the very real danger that these American citizens and legal resident aliens will be turned away by employers or denied employment solely on the basis of their appearance. Moreover, it is not unreasonable to expect that conscientious employers will want to avoid any risk of noncompliance with the employer sanctions law and consequently will err on the side of caution by establishing a policy of simply not hiring job applicants who they fear _might_ be undocumented. Nor is it unreasonable to expect that employers, for the same reasons noted above, will adopt policies of hiring only citizens of the United States, thereby denying employment to foreigners who are actually legal resident aliens of the United States.

Another serious reservation about an employer sanctions program is that it would impose law enforcement duties upon private employers with undesirable consequences not only for the job applicant but also for the employer as well. Although employers have existing responsibilities under such Federal statutes as the Fair Labor Standards Act, the income tax laws, and Title VII, an employer sanctions law would be unique in that its purpose would not be merely the regulation of the employer's conduct, but the regulation--by way of the employer--of the prior, nonemployment-related conduct (i.e., immigration status) of current or prospective employees.

Because of the great potential for employment discrimination under an employer sanctions law, some of its proponents have suggested that the likelihood of discrimination could be curbed, if not avoided, by the development and implementation of a compulsory identification system verifying the applicant's eligibility to work. Upon consideration of the merits of a compulsory identification system, the Commission concluded that the great potential for infringement of privacy rights and the impact this could have on the infringement of other rights strongly suggested that such a system, if adopted, would merely exchange one serious problem for a different one.

In brief, the majority of the Commission concluded that the Nation would not be justified in traveling the untried paths of employer sanctions/identification systems knowing that in doing so it would be jeopardizing seriously equal employment opportunities and the civil liberties of all of our people.

It has been suggested by some that Title VII of the Civil Rights Act of 1964 provides an effective vehicle for preventing any instances of discrimination arising under an employer sanctions program. This argument, however, is flawed in several respects. First, while the employer sanctions provisions of S. 529 apply to employers of 4 or more employees, Title VII coverage applies only to employers of 15 or more employees. Second, as the Commission noted in its national immigration report, it is likely that only a small percentage of employment discrimination cases would be pursued and redressed. Typically persons who would be adversely affected by the proposed employer sanctions law would be citizens and legal residents from racially or culturally identifiable groups, Hispanics and Asians. Members of those groups often may not be well-informed of their rights and how to seek redress. Moreover, substantial burdens would be imposed on the victims of discrimination in pursuing administrative procedures requiring an investment of time, effort, and financial resources, obtaining legal representation, and finally proving that employment discrimination occurred. Additionally, Federal civil rights agencies may have difficulties in responding to employer sanctions employment discrimination cases because such cases would represent an additional workload on already heavily burdened agencies.

Although the Commission found that the adoption of an employer sanctions/worker identification system was inadvisable as a means of effectively dealing with the undocumented worker problem, the Commission was unanimous in recommending that the following steps be taken to address this serious problem. First, the Commission recommended that the Fair Labor Standards Act and other existing labor laws be vigorously enforced. It is alleged that some employers hire undocumented workers instead of citizens or legal resident aliens because they know that the fear of detection will deter undocumented workers from filing complaints relative to subminimum wages paid and/or substandard working conditions. The Commission believes that effective enforcement of existing labor laws would reduce the attractiveness for an employer to hire an undocumented worker, and consequently would help to lower the participation of undocumented workers in the domestic labor market and would help to minimize job displacement.

Second, the Commission recommended that there be additional resources made available to the Immigration and Naturalization Service (INS) so that it may carry out its responsibilities more effectively. In this regard, the Commission believes that the effectiveness of INS would be enhanced by the hiring of additional personnel and through the use of more modern law enforcement technology, such as computerized arrival-departure records. In the immigration law enforcement area, the Commission also recommended the creation of a Border Management Agency within the Department of the Treasury to separate the two conflicting missions of the INS--service and enforcement--in the belief that such action will result in focusing additional time and resources on each of these two distinct missions.

Third, recognizing that immigration is not only a domestic issue but also is inextricably related to foreign policy concerns, the Commission recommended that vigorous efforts be undertaken to secure bilateral and multilateral agreements with the major source countries of undocumented workers to reduce and regulate the population flow between those countries and the United States. In making this recommendation, the Commission noted in its report that:

> There are precedents for the development of working agreements to deal with the population flow between the United States and the major source countries for undocumented workers. It is recognized that the negotiation of such agreements must be linked with other outstanding issues, the resolution of which would be to the advantage of all parties. Also, programs of economic cooperation and development can be worked out in such a way that they further develop the resources required to reduce the need for citizens in source countries to seek work in the United States.

This Commission believes that a determination to approach the foreign policy aspects of the undocumented worker problem with a sense of urgency could result in addressing some of the "root" causes that compel such workers to migrate to the United States in the first place.

The Commission strongly supports the implementation of this three-pronged approach to reducing the participation of undocumented workers in the domestic labor market. The Commission believes that these recommendations, if implemented, will move the Nation forward in effectively dealing with the undocumented worker problem without jeopardizing our civil rights or civil liberties.

STATEMENT
of the
FLORIDA FRUIT & VEGETABLE ASSOCIATION
to the
SENATE SUBCOMMITTEE ON IMMIGRATION & REFUGEE POLICY
of
SENATE JUDICIARY COMMITTEE

Re: S 529 - IMMIGRATION REFORM & CONTROL ACT OF 1983

Presented by George F. Sorn,
Assistant General Manager, FFVA

March 4, 1983

The Florida Fruit & Vegetable Association is an agricultural trade association with substantial membership among those who produce and market fresh fruits, vegetables and sugar cane in the State of Florida.

FFVA's position on various labor issues has been developed over a period of many years by its Labor Committee, which is comprised of grower-employers from throughout Florida and approved by FFVA's Board of Directors.

FFVA POLICY

The comments in this testimony are based on FFVA's Labor Policy, which includes the following:

1. Illegal immigration must be controlled - but it must be done so there is no traumatic effect on agricultural producers in Florida and the United States..

2. Florida agricultural employers should do all reasonably possible to ascertain the legal employability of their farm workers without violating the individual rights of workers. Agricultural employers should not knowingly employ illegal aliens.

FFVA will support Federal legislation that would make it illegal to knowingly hire illegal aliens provided it does not place an undue hardship on the employer. If sanctions upon employers are to be considered, then there must be:

a. one easily identifiable I.D. card, which can be used by the employer as the means of determining whether a worker can legally work (preferably this I.D. card should be a "re-designed" Social Security card), and

b. a legal supplemental source of labor available to replace the illegal workers. This could be accomplished either through a separate "guest worker" program or the current H-2 program with modifications to current regulations to ensure its ability and viability to replace illegal workers where necessary.

3. FFVA continue to support the importation of supplemental foreign workers where necessary to avoid crop losses and disruption of farm production.

4. FFVA continue to work toward more realistic legislation and regulations to ensure the U. S. Department of Labor's supplemental worker certification process reflects a farm worker shortage in sufficient time for relief to be obtained without a crop loss.

PREVIOUS EFFORTS

The Administration and Congress are to be commended for considering ways to drastically reduce and, if possible, eliminate the presence of millions of illegal aliens and refugees in the United States. FFVA worked closely with this Subcommittee and its staff in the 97th Session of Congress and appreciate the time and effort expended by the members and their staff to ensure adequate agricultural employer input into the deliberations. It is unfortunate that the effort fell short of bill passage.

AGRICULTURE AND ALIEN WORKERS

As a goal, we believe U. S. employers should strive to employ a legal work force. The presence of vast numbers of illegal workers can only be detrimental to many American citizens and to other workers who are legally able and willing to work.

Although it is preferable for employers to utilize a work force of legal U. S. residents, it will continue to be necessary and in the national interest to import temporary seasonal workers in critical labor intensive tasks in industries for which the only option would be to limit production and thereby reduce employment opportunities for legal U. S. residents. Admission of supplementary alien labor for these tasks in order to facilitate higher levels of production and domestic employment in other phases of productions, processing and distribution may be desirable under circumstances that protect domestic workers similarly employed. This is particularly important in Agriculture where availability of labor for a critical high labor task in the production of a commodity may effectively limit the volume of production that can be economically undertaken.

FFVA has a longstanding interest in and has operated a program for the legal importation of supplementary temporary non-immigrant alien workers for Florida Agriculture. Some sugar employers in Florida have utilized H-2 workers since their importation during the early years of the second World War.

We feel the continuation of an H-2 program with reasonable regulations, aimed at protecting U. S. workers similarly employed , is imperative and the ability of U. S. employers to avail themselves of this means of obtaining supplemental workers should be preserved over and above any transitional period measures and solutions which the Congress may consider on the illegal alien and refugee question.

There is no doubt in our minds that some sort of program to allow foreign workers to legally immigrate to the U. S. to perform temporary jobs as non-immigrant aliens is an essential part of any solution to the illegal alien problem. Immigration statistics reflect that the curtailment of the Bracero Program and the restrictive regulations imposed on the H-2 employers in the early and mid 1960's must have been a major catalyst in the tremendous increase in the illegal alien problem since that time.

The following statistics taken from various issues of the Annual Reports of the Immigration & Naturalization Service pertain:

Foreign Workers Admitted for Temporary Employment in U.S. Agriculture
by Year - 1958-1976
Deportable Aliens Apprehended in Agriculture in U.S.

	Temporary Workers Admitted for Agricultural Employment	Deportable Aliens Apprehended in Agriculture
1958	433,704	6,310
1959	464,128	4,935
1960	447,207	4,402
1961	312,991	5,162
1962	303,638	5,574
1963	243,120	9,143
1964	237,700	10,689
1965	155,671	14,248
1966	64,881	24,385
1967	57,720	27,830
1968	50,782	39,301
1969	43,527	50,881
1970	47,483	53,674
1971	42,142	74,423
1972	38,752	84,084
1973	37,294	101,220
1974	33,908	111,289
1975	25,434	116,250
1976	22,124	116,197

Source: Various issues of the Annual Report of the Immigration & Naturalization Service

The above table only indicates the number of illegal aliens apprehended in U. S. Agriculture and not the total number used by U. S. Agriculture. It is safe to assume therefore that most of the H-2 and Public Law 78 temporary farm workers of the 50's and 60's have of necessity been replaced by illegal aliens and not by American workers.

The transition from employment situations wherein illegal aliens are utilized on an unregulated basis to a domestic work force supplemented, where necessary, by limited numbers of temporary legal alien workers admitted and employed under regulated conditions and labor standards will require substantial adjustments for many employers. This will be particularly true in certain regions and commodities which are thought to be heavily dependent on illegal workers for high labor using seasonal tasks. While it is necessary to quickly implement strict border control and prohibitions against alien employment, it will be difficult for some employers to rapidly adjust their hiring and labor utilization practices without traumatic economic and human consequences. Neither a small-scale transitional program nor the amnesty provisions of S. 529 available for illegal aliens to become permanent residents is likely to meet the need created by the reduction in illegal alien workers in Ariculture.

SPECIFIC RECOMMENDATIONS

The following specific recommendations are made with reference to S. 529:

1. That Part A section 101 (b) be amended so that within a reasonable period of time, the system of identifying individuals who can legally work in the U. S. be less cumbersome and be reduced so that one identification be used - preferably a revised and "foolproof" Social Security card. The cumbersome system specified in this section will not work in much of Agriculture where a high percentage of the work force is hired under field conditions and often from day-to-day.

2. That Section 211 be amended by deleting the reference to an 8-months limitation on the maximum aggregate period the H-2 workers could work in this country during any year. We believe the length of stay of the worker should be a regulatory decision of the U.S. Department of Justice's Immigration & Naturalization Service as it is now. On February 18, we wrote Mr. Richard Day, Chief Counsel and Staff Director of this Subcommittee, a letter on this subject and we are attaching it to this Statement for further reference.

3. That Section 211 language be amended to provide for a maximum advance period of filing for certification from the 80 days inthe bill to 50 days, which gives the U. S. Department of Labor ample time (30 days) to search for domestic workers who are able, willing and available to fill the jobs. It is axiomatic in the farm labor recruitment field that the further in advance of date of need actual recruitment is accomplished, the lower the percentage of workers recruited who actually show up for work on the date of need.

The language should also provide that an Employer be notified in writing within seven (7) days of his date of filing for certification, if the application does not meet the standards for approval, stating the reasons for rejection, so as to permit the Employer to re-submit a corrected application on a timely basis.

4. That 211 be amended to include a workable definition of "labor dispute." Under current U. S. Department of Labor and Immigration & Naturalization Service definitions, any two or more persons at the job site can create a labor dispute and shut down the process to obtain supplemental H-2 workers. (See Attachment "B")

GENERAL COMMENTS ON S. 529

Section 211 -

We have made no comments on other parts of Section 211. Absence of comment should not be taken to mean we do not approve of those sections - only that at this time, we do not see the need for amendments.

There are sections that we consider extremely IMPORTANT such as sections which (1) retain with the Attorney General as the ultimate authority for allowing any alien to enter the U. S. either as an immigrant or as a non-immigrant, (2) the work test for agricultural workers being at the "time and place needed" (not the entire U. S.), (3) the necessity for the U. S. Department of Labor to certify 20 days or more in advance of need, (4) the expedited review procedures, (5) meaningful consultation with the U. S. Department of Agriculture in any regulatory process or Justice Department decision which would impact adversely on agricultural employers, (6) the "de novo" hearing procedure, and (7) federal preemption so states do not interfere with the operation of the H-2 or other seasonal programs.

OTHER CONSIDERATIONS

We realize to get from where Agriculture is now using a substantial number of illegal workers to where we should be utilizing a complete legal work force could take time and could be a traumatic experience for employers and workers alike. It has been suggested that some sort of transitional program should be considered to cover the period of turmoil. We do not object to this suggestion so long as the H-2 program is left in place as an alternative. For the last several years, a group known as Agricultural Employment Work Group, sponsored by the U. S. Department of Agriculture and comprised of 25 individuals representing employers, worker groups and the academic field, have been meeting and agonizing over various issues affecting agricultural employment in the U. S. One of the papers published in December 1982 deals with "ALIEN WORKERS IN AMERICAN AGRICULTURE: AN ANALYSIS AND RECOMMENDATIONS." A part of that paper is devoted to the suggestion that a temporary guest worker program is necessary. Attached is a copy of this particular paper (Attachment "C") presented as part of this testimony without further comment.

On November 30, 1981, FFVA presented testimony before this subcommittee going into much more detail on the actual operation of the H-2 program in Florida and answering many of the questions that are frequently asked about the program. We have not attempted to incorporate all of that Statement here. However, the information presented in 1981 is still relevant and should be considered in any considerations of the H-2 program as a solution to the illegal alien problem in U. S. Agriculture.

We appreciate the opportunity to present our views and urge this Committee give full consideration to the recommendations so that the end product will eliminate the need for illegal workers in the U. S. and prevent a traumatic effect on both farm employers and farm workers in so doing.

ATTACHMENT "A"

4401 E. Colonial Drive / P.O. Box 20155 / Orlando, Florida 32814 / Phone Area Code 305-894-1351
Frank D. [illegible], South Bay, President / Kenneth P. Jorgensen, Zellwood, Vice President /
James T. Duncan, Orlando, Executive Vice President and General Manager

Florida Fruit & Vegetable Association
a non-profit co-operative association

February 18, 1983

Richard W. Day, Esq.
Chief Counsel and Staff Director
Senate Subcommittee on Immigration
and Rufugee Policy
Room A-509
Immigration & Naturalization Building
119 D Street, N.E.
Washington, D. C. 20510

Dear Mr. Day:

In our discussion in San Diego on February 15th you requested we write giving the scenario under which the 8-month restriction on the stay of an individual H-2 worker as now dictated by the Simpson Bill, Part B, Nonimmigrants, Section 211, would create additional restrictions on the use of H-2 agricultural workers as compared to existing laws and regulations and the difficulties that would arise because of the additional restrictions.

Currently, there are two regulations that need be discussed in relation to the restriction on the length of stay of the H-2 worker. The first is the limitation on the length of certification the employer can obtain from the United States Department of Labor (USDL) on the utilization of H-2 workers. This limitation is 11 months dictated by 20 CFR 655.206(b)(1); however, where the need for the H-2 worker is for a period longer than 11 months (as in the case of sheepherders) the USDL does certify the employer at the appropriate time for an additional 11-month period thereby allowing the continuous utilization of the same H-2 worker for periods longer than 11 months.

The second pertinent regulation is the current Immigration and Naturalization Service 8 CFR 214.2(h)(11) which allows an H-2 worker to stay in the United States for a period up to 3 years so long as he is in the employment only with USDL certified H-2 employers.

It is this second pertinent regulation which the 8-month restriction in the Simpson Bill would destroy and which would severely detract from the ability of the Simpson Bill to present the H-2 Program as a viable substitute for the current heavy dependence on illegal workers in agriculture.

Currently, there is a utilization of H-2 workers between apple and peach employers in northeastern states and Florida sugar growers that lasts longer than 8 months. A group of specific H-2 workers in July, 1982, were recruited in Jamacia for a peach grower in Maryland, the workers then worked for a certified H-2 employer in apples in Maryland, and were subsequently transferred to sugar cane employment in Florida in early November and will not complete employment until mid or late April, 1983. The period is longer than 8 months.

Of more concern than the actual employment pattern given in the preceding paragraph would be the realistically anticipated utilization of H-2 workers as a substitute for the current use of illegal workers in agriculture. Please bear in mind that the scenarios given in the following are true patterns of labor usage (legal and illegal) now and also were active patterns of utilization of domestic workers and legal, H-2, workers in the '50s and '60s, a time when agriculture was not forced to utilize illegal workers by the USDL imposed restrictive requirements and attitudes on the use of H-2 workers.

H-2 workers would fit into the following utilization patterns provide there are shortages of legal workers and there is effective curtailment of the use of illegal workers:

January thru April - Peak utilization in citrus, vegetables, and sugar cane in Central and South Florida.

May and June - Peak utilization in citrus and vegetables in Central and South Florida. Sugar cane harvesting has been completed.

July - Peaches in Central and North Florida. Some H-2 workers transferring to other states such as peaches in Georgia, South Carolina, and Maryland and vegetables in numerous states

August - Tropical fruit in South Florida and various crops in the northeastern states.

September - Tropical fruit in South Florida; some preharvest work in Florida. Apple harvesting in northeastern states.

October - Same as September except increasing utilization in Florida vegetables and sugar cane.

November - Workers transferring from northeastern states to Florida sugar cane, vegetables, and citrus.

December - Heavy utilization in Florida in cane, vegetables, and citrus.

Coordinated utilization of H-2 workers in Florida would reduce the total need for farm workers because of better utilization and would make more effective the use of the USDL Employment Service System in ensuring the use of all legal workers available and willing to work in agriculture.

It is our estimate that the month by month utilization need for H-2 workers in Florida would vary from about 1,000 or less during the summer months to about 20,000 during the peak harvesting months of December through April. These numbers are considerably less than the estimated numbers of illegal workers now being utilized in Florida agriculture.

During the low H-2 utilization in Florida some of the H-2 workers would be transferred to certified employers in other states just as they were in the '50s and '60s and then transferred back to certified Florida employers in the fall and early winter.

The imposition of an 8-month limitation of stay on the individual H-2 worker would reduce the mobility of an H-2 worker and would severely reduce the viability of the H-2 Worker Program to replace illegal workers.

We respectfully request the 8-month limitation on the stay of an individual H-2 worker be removed from the Simpson Bill so that an individual H-2 worker can stay up to 3 years as currently allowed by Immigration Regulations.

Sincerely,

George F. Sorn

George F. Sorn
Assistant General Manager and
Manager, FFVA Labor Division

GFS:jmmcg
cc: Senator Lawton M. Chiles
Senator Paula Hawkins
Congressman Bill McCollum
Mr. Frank D. Teets
Mr. Perry R. Ellsworth
Mr. Jim Terrill
Mr. William Bonde

ATTACHMENT "B"

DEFINITION OF "LABOR DISPUTE"

A labor dispute shall be deemed to exist at any job site when 50 per cent or more of the bona fide agricultural employees of an employer in the petitioned occupation and at the place of employment, without coercion, are on strike against that employer or have been locked out by that employer on account of a good faith dispute over wages, hours and working conditions.

A labor dispute shall be deemed to have terminated when less than 50 per cent of the agricultural employees of the employer remain on strike; but in no case shall a labor dispute survive the term of an employee's term of employment.

A labor dispute shall bar replacements only for the number of strikers actually on strike. Certification for the remainder of H-2 workers applied for shall be granted if the application is in order and all other criteria are met.

Upon application of any interested party, the Secretary of Labor shall, within 3 days where possible, but not more than 5 days in any case, conduct a hearing to determine whether a labor dispute exists and/or whether a labor dispute has terminated, and the number of workers affected thereby.

ALIEN WORKERS IN AMERICAN AGRICULTURE:

ANALYSIS AND RECOMMENDATIONS

Prepared by

Agricultural Employment Work Group
United States Department of Agriculture

Second in a series of publications
on Human Resources in Agriculture

Division of Agricultural Sciences
University of California
Berkeley, California

December 1982

FOREWORD

This publication is the second in a series on agricultural employment in the United States. Some of the reports in the series will be broad in perspective, surveying agricultural employment problems and approaches to their resolution. Others, as does this one, will focus specifically on such issues as the employment of foreign workers in U.S. agriculture, noteworthy personnel management innovations, and labor market developments.

The series, including reports of several studies in progress, represents partial fulfillment of the mission of the Agricultural Employment Work Group (AEWG). A major objective in establishing the Work Group was to create a forum for the consideration of agricultural employment and management policies that would advance the well-being of the industry—growers and workers—and society at large. The AEWG was organized in 1980 by the United States Department of Agriculture to study labor issues in the nation's agriculture. Its primary charge was to undertake research and analysis upon which to base recommendations directed toward USDA officials, growers, labor leaders, researchers, and other decision makers who might have a hand in improving the agricultural labor climate.

The Division of Agricultural Sciences, University of California, initiated publication of this series under contract to the Work Group. Activities and projects of AEWG were begun with funds from the Office of the Secretary, U.S. Department of Agriculture. Continued financial support for the Work Group has been provided by the USDA's Economic Research Service and Extension Service, and has been administered through a cooperative research agreement with the Center for the Study of Human Resources, University of Texas at Austin.

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PREFACE

The Agricultural Employment Work Group issued a preliminary report in December 1980—*Agricultural Labor in the 1980's: A Survey with Recommendations*. It offered a consensus view of agricultural labor problems in the United States and general approaches toward resolving them. Since that time the Work Group has engaged in more detailed examination of several recommended areas of action in order to develop more specific ideas for implementing its general suggestions. It has also been discussing aspects of the agricultural labor problem not dealt with in the initial publication. This report originated in AEWG deliberations for nearly a year.

Here the AEWG presents a consensus view of the illegal alien problem in American agriculture and recommends measures for alleviating it. The group formulated this view contemporaneously with the development and introduction of the Administration's proposals for immigration reform, as well as with the extensive Congressional hearings and widespread public discussion of related issues. Of course, this report was influenced and informed by these ongoing events, particularly the debate over current legislative proposals. The Work Group has attempted to consider many of the issues raised by these proposals; however, this document is not a response to any specific proposal.

This report points out that the issues of illegal immigration and employment are complex. It includes a package of recommendations which the Work Group feels, taken together, will achieve the stated goals. While some specific elements recommended here may not be considered desirable by all individual members, the Work Group collectively does endorse the package of recommendations as an approach to meeting stated objectives with the least disadvantage to parties at interest.

The Agricultural Employment Work Group is a unique combination of individuals drawn from agricultural employer and employee interests, the agricultural economics and personnel management research community, and government. Group members who participated in the preparation of this report were:

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The editors wish to thank all the many individuals and organizations whose contributions generated this report.

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THE PRESENT SITUATION

A popular conception of an illegal alien in the United States is of a Mexican peasant toiling in the hot sun in the fields of the Southwest. Although there are no reliable statistics on the number of characteristics of illegal aliens in the United States, only about half are estimated to be Mexican. Many are employed in manufacturing, service, and construction. Most hired farmworkers in the United States are U.S. citizens or legally employed noncitizens. Nevertheless, observers both inside and outside agriculture concede that there are substantial and probably increasing numbers of persons illegally in the United States who are employed in the industry, mostly of Hispanic origin. They are employed in all commodities and all regions, though they are particularly significant in the Southwest and on the West Coast in seasonal employment in the fruit and vegetable industries.

This phenomenon is not new, particularly in the Southwest. This region, much of which was a part of Mexico until early in this century, has experienced regular migration of Mexicans with crops since the area became a major producer of labor-intensive agricultural commodities. Before 1924 there was no attempt to control this immigration. From 1942 until 1964 the Bracero Program sanctioned and, in fact, facilitated the employment of Mexican nationals in U.S. agriculture. Since the termination of the Bracero Program, the legal admission of nonimmigrant temporary workers has occurred under the so-called H-2 provisions of the Immigration and Nationality Act of 1952. Admissions under this program have been relatively limited. Approximately 18,000 agriculture and woods workers were admitted in 1980, primarily for work on the Eastern Seaboard. Illegal immigration, however, appears to have increased substantially. Employment of illegal aliens is now common, even in the midwestern and mid-Atlantic states, and reaches into New England.

Most illegal aliens are employed in seasonal, rather than permanent, agricultural jobs. Many of these workers are probably regular migrants with permanent homes and small landholdings in northern Mexico. These migrants supplement meager local earnings with migratory farm work in the United States during their off-season. Others are probably persons intending to relocate to the United States who use seasonal, agricultural work to gain an economic foothold and later assimilate into the nonfarm economy. Some are individuals whose primary employment consists of work in the United States periodically interspersed with periods of unemployment in their native country.

Regardless of the pattern of illegal immigration, it is universally accepted that its motive is economic. The prospective earnings from even low-wage, menial agricultural employment in the United States are much more than expected earnings in Mexico. For many, employment in the United States is indispensable to viability at home.

Labor performed by the alien work force is also important to the production of the commodities in which they work. In the absence of illegal workers, this work would have to be performed by domestic workers or, in the long run, mechanized. Price and/or imports of labor-intensive commodities would likely increase and production decrease. Nevertheless, the reliance of farmers on a large illegal work force has serious negative consequences in destabilizing the labor force, exploiting the alien workers, and undermining domestic labor standards.

Seasonal agricultural employment is unstable: the employment relationship is terminated each season and must be re-established the following year. Workers face a perennial job search and employers must recruit a new work force each year. If the sources of workers and jobs are widely separated, distance itself adds a further destabilizing factor. If the migratory work force enters and remains in the country illegally, moreover, instability of the employment relationship, both for employer and worker, is vastly increased.

Furthermore, the vulnerability of illegal workers to unscrupulous employers or third parties is substantial. The presence of illegal workers has been criticized on the grounds, among others, that workers are exploited by employers who do not observe required work and pay standards. While there are few documented cases of such abuses, persons illegally employed are obviously vulnerable. Their illegal status provides an opportunity for knowing employers to undercut labor standards and to gain a competitive advantage over most employers who do meet their responsibilities under U.S. laws and regulations governing the workplace.

Workers are also vulnerable to abuse from third parties. They frequently pay exhorbitant prices for falsified credentials, transportation, and housing (which is often substandard and unsafe). They can be compelled under continuing threat of exposure to pay a portion of their earnings to "coyotes" who arrange for their entrance and employment. Illegal workers are reluctant to report crimes perpetrated on them or to seek needed medical and other social services.

While the results of these worker abuses are immediate, and sometimes visible, other important negative consequences of a significant illegal work force tend to be more long range and less visible.

Large numbers of unskilled workers available to agriculture reduce competitive pressure to upgrade labor standards and provide an incentive to undertake or expand economic activity in areas for which the domestic labor supply would be inadequate.

Such practices may also result in actual decline of labor standards; for example, crews of illegal workers may receive only minimum wages and benefits in direct competition with nearby employers of domestic crews for whom benefits and employment stabilizing measures are most costly. Even if labor standards do not actually decline, they may fail to improve as they otherwise might have because the labor market provides no payoff to employers who initiate improvements.

POLICY GOALS

A domestic labor force should be the goal of immigration and alien policy. Granting alien workers unlimited access to the domestic labor market effectively puts domestic workers in competiton with wages and working conditions of similarly skilled workers in other countries. Under such circumstances wages and labor standards for unskilled and semi-skilled work, for which an ample supply of alien labor apparently exists, would quickly be pushed down by foreign competition to minimum legislated levels, perhaps even creating competitive pressure to undercut these minimums. Neither employers, workers, nor the larger society are well served by encouraging the development of economic productive capacity which could not otherwise be sustained by the domestic labor force at or above minimum labor force standards.

At a minimum, immigration and alien policy must establish and insure a legal work force. The economic, social, political, and human costs of the present widespread violation of immigration laws are unacceptable. Inability to control national borders and, as a consequence, national labor policy, cannot be permitted to continue. All parties at interest—workers, employers, society as a whole, and often the illegal entrants themselves—are harmed by the existence of a large illegal labor force and an underground labor market.

Measures necessary for creating a legal labor force require some departures from present practice. However, they can be implemented without resulting in discrimination or infringement of personal freedom. Taken together, they should enhance domestic employment, productivity and economic activity, and prevent abuse.

GENERAL RECOMMENDATIONS

The following recommendations, taken together, constitute an approach to resolution of both the immediate problems and underlying causes of the complex alien labor situation. While some specific elements by themselves may not be acceptable to individual interest groups, we feel that the package as a whole accomplishes the desired goal of a legal, productive agricultural work force while meeting the basic concerns of all parties involved. These recommendations are not offered individually, but together as a program. The individual elements, taken alone, may not accomplish the desired purposes and could have negative effects.

The Work Group's recommendations are summarized below and are amplified in the remainder of this paper.

(a) The incentive to enter this country illegally arises from economic, social, and political problems in the immigrant's home nation as well as the lure of higher earnings in the United States. In particular, the economic conditions in parts of Mexico, from which many illegal entrants come, have made emigration almost a matter of human survival. For humanitarian as well as political and economic reasons, it is in the interest of the United States to assist other nations, particularly Mexico, in *developing economic opportunities* for citizens in their home countries.

(b) The significant attraction of potential economic gain from employment in the United States and the practical impossibility of sealing the nation's borders must be recognized. An essential element of any effective policy to reduce illegal immigration and mitigate its most immediate economic effects is to *deny illegal aliens access to employment* by (1) making it illegal to employ workers not entitled to work in the United States and (2) providing workers an *effective but simple means to demonstrate eligibility for legal employment.*

(c) Both current labor and immigration laws, and the new measures necessary to end current problems, must be *strictly and uniformly enforced*. Current levels of enforcement and weak penalties for violation apparently make the risk of apprehension for illegal border crossers, visa abusers, and others relatively low. Both enforcement of and penalties for violating laws to control illegal immigration and deny access to jobs must make the risk of apprehension and the cost of violation high, or these measures will be as ineffective as existing ones. To avoid undermining the competitive position of law-abiding employers and workers and to minimize economic dislocations and inefficiencies, this enforcement must be uniform across all jurisdictions and industries.

(d) It would be both impractical and inhumane to attempt now to uproot and expel those persons permanently settled in the United States who entered illegally. Those who have demonstrated that they are law abiding residents should be *granted legal status* immediately and without penalty, and provision made for them to achieve full citizenship eventually.

(e) The seasonal agricultural work force is thought to include a substantial number of migratory aliens seeking only temporary seasonal employment in the United States. These persons likely have little intention or desire to settle here permanently. The imposition of border controls and employer sanctions could rapidly and drastically reduce this pool of labor for migratory seasonal employment, with severe consequences for the agricultural industry. Amnesty provisions designed to avoid this labor market shock could have undesirable side effects, including the attraction of additional illegal entrants during the period when the amnesty proposals are under consideration by Congress. For this reason it appears likely that an amnesty program will apply only to workers continuously present in the United States (i.e., nonmigrants) before a date preceding the consideration of amnesty.

A transitional period will be necessary for the agricultural industry to develop and implement plans, undertake the capital investments, and accomplish the other changes necessary to adapt to a legal work force. To aid in this transition, and at the same time to end quickly the illegal status of aliens in the present labor force, a *transitional guestworker program* is recommended. This would provide immediate protection for employers and those workers not seeking or not eligible for permanent resident status and would provide for termination of the program on a schedule and under conditions known in advance.

(f) Circumstances may arise, as they have in the past, where the domestic labor market will not provide enough seasonal workers to sustain production in given commodities and regions. It may be in the national interest to import workers for critical labor-intensive tasks in industries for which the only other option would be to limit production. Admission of supplementary alien labor for such tasks may be desirable under circumstances that protect domestic workers similarly employed. This is particularly important in agriculture, where availability of labor for a critical, high labor task in the production of a commodity in which labor demand is otherwise much lower, may effectively limit the volume of production that can be economically undertaken.

It is recommended that the provisions of the Immigration and Nationality Act of 1952 for the *temporary admission of alien labor* (the so-called "H-2" provisions) be used in such circumstances and that the regulations governing admission and employment of these workers be improved.

(g) Transition to a domestic labor force will greatly intensify demands on the domestic agricultural labor market. *Improvement of domestic labor market mechanisms* will aid in the transition to a domestic labor force and will increase the employment and productivity of domestic workers and the efficiency of domestic industry. While improving the efficiency of the domestic labor market is a desirable objective under any circumstances, it is particularly critical given the severe stress that transition to a domestic labor force will entail. It is recommended that both growers' and workers' vocational market skills and operation of domestic migratory labor markets be upgraded through (1) improving Employment Service operations; (2) facilitating the education of labor contractors, and (3) promoting the establishment of organizations by growers, farmworker organizations, and others to assist in the employment and efficient utilization of the domestic work force.

The following section elaborates on the general recommendations above that are particularly relevant to agriculture and farmworkers.

DETAILED RECOMMENDATIONS

Amnesty

It is recommended that aliens presently residing and working in the United States, who have demonstrated a history as law abiding residents and who wish to remain here, be permitted to identify themselves without penalty and initiate procedures toward attaining permanent resident status and eventual citizenship. Those who have been in the United States for a long period should not be subjected to an additional waiting period before acquiring permanent resident status and a legal right to work. It is recommended that those aliens who can demonstrate five years or more of continuous residence and employment before 1980 be permitted to apply for permanent resident status immediately. Persons present before 1980 with less than five years of continuous employment and residence should be permitted to apply for permanent resident status at the end of five years of residence. It is further recommended that persons who have been alien migrant workers and/or guestworkers and/or H-2 workers for some period of time be given preference for immigrant visas and permanent resident status if they desire to immigrate.

We recognize that amnesty has little relevance to workers who do not wish to remain in the United States. Strict border enforcement and sanctions against employing aliens are likely to reduce greatly, if not eliminate, the alien migratory labor supply. A temporary, transitional guestworker program, as recommended in this paper, would prevent the rapid and probably severe repercussions that sudden disappearance of migratory aliens would have on important segments of agriculture.

Worker Identification

Effective elimination of the economic incentive to illegal immigration depends on the application of sanctions to employers who knowingly employ illegal aliens. Effective employer sanctions, in turn, require a simple, quick means for workers to demonstrate their eligibility for employment as well as a means for employers to verify workers' legal status. A worker identification system is the key to the feasibility and effectiveness of employer sanctions and thus of the entire mechanism to discourage illegal immigration.

The mechanisms and procedures for worker identification are of particular concern to minority agricultural workers, who risk discrimination or outright denial of job opportunities if a simple identification procedure is not applied uniformly to all workers. Employers, particularly those employing day haul and field hire workers, also require a simple, safe test of worker legality. It is recommended that during the guestworker transition period, a renewable counterfeit-resistant Social Security card with a photograph be issued upon satisfactory demonstration of citizenship or legal authorization to be employed, that this card be sufficient proof of the right to employment, and that all workers be required to show such cards before being employed.

Employers are now required to obtain Social Security numbers for most of their employees, and extending this requirement to all should not present insurmountable difficulties to any employer or worker. It appears to be the least intrusive means of controlling illegal employment. Many states now require a photograph on the driver's license, and it has proven technically and economically feasible to issue large numbers of cards over a period of years.

Various proposals have been made for more comprehensive identification and work authorization systems, including requiring identification numbers or Social Security numbers to be called in to a central data bank and receiving authorization before hiring can take place. While such systems would undoubtedly be feasible for employers of few workers and those with fixed site employment of relatively long duration, it might create severe difficulties for agricultural employers hiring large numbers of workers "on the spot" when needed or for employment of short duration. While only a small proportion of agricultural employment is of this nature, it is precisely in this sector that illegal immigration has presented its greatest problems.

During the phase-in of new Social Security cards, it is recommended that relatively simple procedures be established to provide temporary identification for domestic workers. Some procedures for self or third party identification through the Employment Service would be appropriate. This measure is consistent with the recommendation to grant guestworker visas or permanent resident status to aliens in the labor force during initiation of the program.

Employer Sanctions and Enforcement Activities

Enforcement procedures and penalties for violators will be the key to the effectiveness of measures to control access of illegal aliens to jobs. These mechanisms and uniformity of enforcement will also be key ingredients in creating respect for and compliance with the new law.

In an industry as highly competitive as agriculture, lax enforcement and/or low penalties for violators can induce some employers to take the risk of violation. This effective undercutting of law-abiding employers, if sufficiently widespread, can virtually force them to either break the law themselves or abandon production. Enforcement of prohibitions against employment of illegal aliens must be such that both the probability and cost of apprehension are high enough to induce employers and illegal aliens to not take the risk.

Both existing labor standards and new procedures for certifying the need for supplemental foreign labor must be strictly and uniformly enforced across all industries and geographic areas. Otherwise, economic dislocations will result as production is skewed to areas with more lax certification procedures and labor standards enforcement. Both workers and employers in areas with more stringent enforcement will suffer through loss of employment and production opportunities. Local and state enforcements of labor standards are notorious for their vulnerability to political pressure from strong local interests. If federal law is to be made in this arena, as it clearly must be, the federal government has the obligation to protect producers in all jurisdictions from inadequate enforcement in competing areas. While this does not necessarily imply federal enforcement, it does imply strong federal monitoring and surveillance of enforcement activity.

Emphasis of enforcement must be on apprehension of hard core violators and the most serious violations. The measures by which the productivity of the enforcement activity is evaluated must reflect that emphasis. They should not result in incentives to generate large numbers of violations which are largely technical in nature and of little consequence to the welfare of workers. Similarly, they should be geared toward apprehending those not using the prescribed procedures rather than toward frequent surveillance or harassment of those who do.

Both the productivity of and respect for enforcement will be enhanced by eliminating duplicate and overlapping inspections and inconsistent regulations among the many applicable to agricultural work. Ideally, this might be accomplished by concentrating responsibility for enforcement of all regulations in a single agency. Furthermore, the emphasis of enforcement should be on producing compliance and, only if that fails, punishment. Particularly at the outset, significant enforcement resources should be devoted to educating employers about how to comply with regulations. Opportunities for pre-inspections where violations can be brought to light and corrected without penalty would be a logical component of the educational effort.

Enforcement activities lead inevitably to an adversarial relationship between the agents and the subjects of enforcement. The experience of the U.S. Employment Service in agricultural placement activity has been one recent lesson in the futility of expecting the same agency to be both a provider of service and a policeman. It is recommended that the responsibility for assisting growers in recruitment and for certifying recruitment and training programs, plus the need for supplementary labor if it arises, be vested in a agency separate from the one responsible for enforcement of labor standards. In the case of agriculture, consideration might be given to placing responsibility for service functions in USDA and enforcement activities in USDL.

The Temporary Guestworker Program

The available evidence, though largely anecdotal, suggests that a significant component of the illegal work force in agriculture is of Mexican nationals who migrate to the United States temporarily to perform seasonal work here with no intention of remaining in this country. Theirs is probably the preponderant pattern of alien employment in agriculture, and growers in some regions and in some commodities are heavily dependent on alien migrants to perform such essential labor intensive seasonal tasks as harvesting. Furthermore, there may be substantial turnover and a significant influx of new entrants into this stream in any given year, as is the case with the domestic migratory labor force.

The immediate impact of strict controls and employer sanctions on this alien migratory labor supply will depend in part on the provisions of an amnesty program and in part on the composition and behavior of the alien labor force employed in agriculture. Two scenarios are possible:

(1) *If* the migratory labor force is stable, with a high proportion of immigrants in any particular year returning the next year, and *if* amnesty provisions permit these workers to achieve legal status, maintain permanent residence in their homeland, and enter and leave the United States at will to accept employment, *then* the alien migratory labor supply will likely decrease only gradually as workers drop out of the migratory stream, and the transition to a domestic labor force supplemented by an H-2 temporary program can occur in a gradual and orderly fashion.

(2) *If*, however, it obtains (a) that an amnesty program will apply only to aliens who can demonstrate a history of residence and employment in the United States before a date preceding the consideration of amnesty, and/or (b) that amnesty will not be applicable to aliens maintaining a permanent residence

outside the United States who seek to enter the U.S. only for periods of temporary employment, and/or (c) that considerable instability and therefore a considerable influx of new entrants to the alien migratory labor force will prevail in any given year, *then* strict border controls and employment sanctions could significantly and rapidly reduce the supply of seasonal migratory labor available to U.S. agriculture.

A small scale temporary guestworker program would not prevent this labor market shock. Although reliable data on numbers of aliens presently employed in agriculture are not available, virtually all observers agree that the numbers are significantly greater than the number of workers included in some present guestworker programs. Furthermore, there is no guarantee that all or even any of these proposed guestworkers would be employed in agriculture.

We recognize the necessity of imposing stringent conditions on admissions and employment of temporary farm labor to protect U.S. workers. However, the transition to a domestic work force, even one supplemented by temporary alien H-2 workers, will be difficult for the agricultural industry to make quickly. Wage standards and working conditions will have to be upgraded in many areas, capital investments in housing and other facilities will have to be made, and recruitment, training, and other labor market programs will have to be developed and put in place by growers who have been largely dependent on a walk-in labor supply. It is necessary to provide a transition period for the agricultural industry to adapt to these new standards and develop alternative domestic labor sources. The sudden withdrawal of a significant component of the industry's labor force is in the best interests of neither the industry nor the nation. A period of stability and predictability of short-run labor supply will provide the best environment for growers to develop strategies to meet changing labor market conditions.

The Work Group recommends a *temporary guestworker program* as a short-term transitional mechanism. Its purpose would be to provide time for legalizing part of the present illegal work force, developing intelligence on the magnitude, location, and employment patterns of this work force, and establishing a fixed schedule, known in advance, for transition to a legal work force.

The general outline of such a transitional plan might be as follows:

During the initial year growers would be granted certification to employ as many work hours of guestworker labor as they request in any given period, up to the certified number (or a percentage) of labor hours they used in the same period of the previous year. Illegal aliens presently employed but not eligible for or desirous of permanent resident status under amnesty provisions would receive temporary guestworker visas which would expire at the end of the transitional guestworker program. This move would immediately bring employers and aliens into compliance with the law. It would require little or no adjustment except to bring employment practices into conformity with existing laws in those limited instances where they are not already. It would yield accurate data on the number, location and period of employment of the current alien population. It would provide the basis for assessing the magnitude and locations of adjustment problems and planning for assistance in alleviating them.

Employers who fail to comply would be subjected to the penalties for hiring illegal aliens. To enlarge the incentive for compliance, violators could also be denied certification of guestworkers under the transitional program and access to the regular H-2 certification procedures for a specified period.

This temporary guestworker program should include at its inception a mechanism and schedule for its termination. It is recommended that the program be gradually phased out through annual percentage reductions in growers' certifications for guestworkers. If the transition program were to last five years, for example, each employer's guestworker certification would be reduced by 20 percent annually.

During the transition period employers would have to adjust their production and employment plans to accommodate the guestworker reductions. Growers would change production patterns and/or increase employment of U.S. workers. The transition program should be flexible enough so that reducing the employment of guestworkers below the maximum permissible in a given season would not reduce eligibility for certification the following year. In effect, the employer would be certified at the outset of the program for a specified number of guestworkers for each year of the program. The only basis on which that certification could be prematurely reduced would be the employment of illegal aliens.

If at any time during the transition process a grower were not able to obtain sufficient domestic workers, application for H-2 certification could be made by meeting the requirements for that program. Since requirements for H-2 certification are considerably more stringent than for guestworkers, the move to H-2 workers would have to be complete (i.e., all alien labor needs would have to be met under the H-2 program) and the employer's eligibility for participation in the guestworker program would terminate.

This transition program would require no special enforcement mechanisms or regulations. It would have a specified termination built in. Most importantly, it would provide a mechanism for employers' immediate compliance and gradual adjustment to the domestic labor market.

Supplementary Foreign Worker Admission

There are likely to be instances where employers take reasonable and prudent measures to obtain domestic workers and are unable to do so. This circumstance is particularly probable in agriculture, where large variations in seasonal labor demand can occur in rural areas with a limited indigenous labor force. Many illegal aliens are now employed in such seasonal jobs. Their availability has led to the development of production capacity that would undoubtedly not have existed without them.

These job opportunities may not be completely filled by domestic migrants. Furthermore, some would advocate that domestic national labor policy should pursue the end of migratory work as an essential means of economic survival. Yet it may not be in the long-term best interest of the nation to limit domestic production of *seasonally* labor-intensive commodities to those levels which can be sustained by a local temporary labor supply.

The Immigration and Nationality Act of 1952 contains provisions (so-called "H-2" provisions) for the temporary admission of aliens to work in the United States. At present the number of workers admitted under this program is relatively low and only about half are employed in agriculture. However, a plentiful supply of illegal migrants has eliminated incentives for many producers to seek H-2 labor. Ending access to illegal aliens is likely to result in additional instances in which employers are unable to obtain sufficient temporary seasonal labor in the domestic labor market.

The H-2 legislation and regulations establish criteria for determining when a shortage of domestic labor exists and specify conditions under which supplementary foreign labor may be admitted without bringing "adverse effects" on domestic workers. This program provides a legal mechanism for supplementing the labor force which facilitates higher levels of agricultural production and employment of permanent and long-term seasonal domestic workers than would otherwise exist. It is recommended that this program be continued, with some procedural modifications, to provide supplementary workers for seasonal and temporary jobs for which the domestic labor supply is insufficient.

A basic tenet of this program should be the *temporary* admission of aliens for *temporary or seasonal* employment. Its purpose is to facilitate expanded agricultural production and higher levels of employment for U.S. workers in long-term seasonal and year-round jobs in production, processing, and distribution. It is recognized that the admission of temporary alien labor affects the wages and working conditions of domestic workers in similar employment. Therefore, strict control of the terms and conditions under which alien labor is admitted and guaranteed access of domestic workers to these jobs are essential to a supplementary foreign labor program.

Modifications in H-2 regulations and procedures are needed to make the program both workable for growers and considerate of domestic workers. While this document cannot discuss H-2 regulations in detail, it can suggest some basic guidelines for revised H-2 procedures:

(1) All wages and other benefits provided to H-2 workers should also be provided to U.S. workers employed in the same jobs. The provisions permitting employment of alien workers should not provide a cost incentive for the employment of H-2 workers. Similarly, it should not impose an economic penalty on employers of H-2 workers where the unavailability of sufficient U.S. workers has been demonstrated.

(2) Standards for job offers and recruitment procedures which must be met to certify a shortage of U.S. workers for temporary agricultural jobs should not be more stringent than those required for permanent admission of aliens for employment. Appropriate criteria should be specified for recruiting seasonal workers in the local labor market, defined largely by distance or population factors. At the same time, both present and prospective domestic migratory labor sources must be assured access to these jobs.

(3) It has been observed that earnings of skilled domestic and alien workers in seasonal agricultural jobs are often attractive, but that unskilled domestic workers are sometimes unable to attain the proficiency necessary to earn at similar levels. To assure meaningful access of domestic workers to jobs for which labor is in short supply and to maximize effectiveness of domestic recruitment, training should be offered for at least a specified percentage of the jobs for which certification is being sought. This training could be provided by individual growers, grower associations, farmworker organizations, or other agencies.

(4) In the absence of higher standards, the wage rate in jobs for which foreign workers are admitted could be pushed down to the minimum wage by market forces. Wage rates of domestic workers must be protected in the certification standards for foreign worker admission. The wage rate which workers must be offered by employers seeking certification for foreign labor should be no less than the prevailing wage for like or similar agricultural work in the area where the foreign workers are to be employed and no less than a fixed percentage above the minimum wage rate established in the Fair Labor Standards Act (FLSA). The employability of U.S. workers unable to attain sufficient production at prevailing piece rates to earn the required minimum wage should be protected by provisions that permit their continued employment at not less than the FLSA minimum.

It is recognized that producers operating in a competitive market will have little incentive to establish labor standards (pay, fringe benefits, and working conditions) for U.S. workers substantially more costly than those required to qualify for foreign workers. Thus, the conditions governing admission of aliens into certain occupations will greatly affect the employment of domestic workers in the same markets. Ripple effects of a supplementary labor program are inevitable. If labor standards are set sufficiently high and the scarcity of U.S. workers for these jobs is adequately established, however, the supplementary labor program will be beneficial on balance.